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THE MARITIME CODE

OF

THE GERMAN EMPIRE

TRANSLATED BY

W. ARNOLD

LONDON
EFFINGHAM WILSON
11 ROYAL EXCHANGE, E.C.
1900

INTRODUCTION.

THE New German Maritime Code, forming part of the German General Mercantile Law, was passed in May, 1897, and came into force on the 1st of January, 1900. It is based upon the first German Mercantile Law enacted in 1869, but has received numerous alterations and amendments.

I have followed, as far as possible, the translation of the old law, published by my late partner, Dr. Wendt, in which I also assisted, and have again carefully collated the same with the original.

W. ARNOLD.

LONDON, *April*, 1900.

COMPARISON OF THE ARTICLES OF THE OLD AND NEW CODES.

Running Numbers.		Running Numbers.		Running Numbers.		Running Numbers.	
Old Code.	New Code.	Old Code.	New Code.	Old Code.	New Code.	Old Code.	New Code.
432	—	475	508	519	549	589	588
433	—	476	509	520	550	590	589
434	—	477	510	521	551	591	590
435	—	478	511	522	552	592	591
436	—	479	512	523	553	593	592
437	—	480	513	524	554	594	593
438	—	481	514	525	—	595	594
439	474	482	515	526	555	596	595
440	475	483	516	527	—	597	596
441	476	484	517	528		598	597
442	477	485	518	to	—	599	598
443	478	486	519	556		600	599
444	479	487	520	557	556	601	600
—	480	488	—	558	557	602	601
445	481	489	521	559	558	603	602
446	482	490	522	560	559	604	603
447	483	491	523	561	560	605	604
448	—	492	524	562	561	606	605
449	—	493	525	563	562	607	606
450	484	494	—	564	563	608	607
451	485	495	526	565	564	609	608
452	486	496	527	566	565	610	609
453	487	497	528	567	566	611	610
454	—	498	529	568	567	612	611
455	488	499	530	569	568	613	612
456	489	500	531	570	569	614	613
457	490	501	532	571	570	615	614
458	491	502	533	572	571	616	615
459	492	503	534	573	572	617	616
460	493	504	535	574	573	618	617
461	494	505	536	575	574	619	618
462	495	506	537	576	575	620	619
463	496	507	538	577	576	621	620
464	497	508	539	578	577	622	621
465	498	509	540	579	578	623	622
466	499	510	541	580	579	624	623
467	500	511	542	581	580	625	624
468	501	512	—	582	581	626	—
469	502	513	543	583	582	627	625
470	503	514	544	584	583	628	626
471	504	515	545	585	584	629	627
472	505	516	546	586	585	630	628
473	506	517	547	587	586	631	629
474	507	518	548	588	587	632	630

Running Numbers.		Running Numbers.		Running Numbers.		Running Numbers.	
Old Code.	New Code.	Old Code.	New Code.	Old Code.	New Code.	Old Code.	New Code.
633	631	682	681	732	730	781	777
634	632	683	682	733	731	782	778
635	633	684	683	734	732	783	779
636	634	685	684	735	733	784	780
637	635	686	685	736	734	785	781
638	636	687	686	737	735	786	782
639	637	688	687	738	736	787	783
640	638	689	688	739	737	788	784
641	639	690	689	740	738	789	785
642	640	691	690	741	739	790	786
643	641	692	691	742	740	791	787
644	642	693	692	743	741	792	788
645	643	694	693	744	742	793	789
646	644	695	694	745	743	794	790
647	645	696	695	746	744	795	791
648	646	697	696	747	745	796	792
649	647	698	697	748	746	797	793
650	648	699	698	749	747	798	794
651	649	700	699	750	748	799	795
652	650	701	—	751	749	800	796
653	651	702	700	752	750	801	797
654	652	703	701	753	751	802	798
655	653	704	702	754	752	803	799
656	654	705	703	755	753	804	800
657	655	706	704	756	—	805	801
658	656	707	705	757	754	806	802
659	657	708	706	758	755	807	803
660	658	709	707	759	756	808	804
661	659	710	708	760	757	809	805
662	660	711	709	761	758	810	806
663	661	712	710	762	759	811	807
664	662	713	711	763	760	812	808
—	663	714	712	764	761	813	809
665	664	715	713	765	762	814	810
666	665	716	714	766	763	815	811
667	666	717	715	767	764	816	812
668	667	718	716	768	765	817	813
669	668	719	717	769	—	818	814
670	669	720	718	770	766	819	815
671	670	721	719	771	767	820	816
672	671	722	720	772	768	821	817
673	672	723	721	773	769	822	818
674	673	724	722	—	770	823	819
675	674	725	723	774	771	824	820
676	675	726	724	775	772	825	821
677	676	727	725	776	773	826	822
678	677	728	726	777	774	827	823
679	678	729	727	778	775	828	824
680	679	730	728	779	776	829	825
681	680	731	729	780	—	830	826

Running Numbers.		Running Numbers.		Running Numbers.		Running Numbers.	
Old Code.	New Code.	Old Code.	New Code.	Old Code.	New Code.	Old Code.	New Code.
831	827	852	848	873	869	894	889
832	828	853	849	874	870	895	890
833	829	854	850	875	871	896	891
834	830	855	851	876	872	897	892
835	831	856	852	877	873	898	893
836	832	857	853	878	874	899	894
837	833	858	854	879	875	900	895
838	834	859	855	880	876	901	896
839	835	860	856	881	877	902	897
840	836	861	857	882	878	903	898
841	837	862	858	883	879	904	899
842	838	863	859	884	880	905	900
843	839	864	860	885	881	906	901
844	840	865	861	886	882	907	902
845	841	866	862	887	883	908	903
846	842	867	863	888	884	909	904
847	843	868	864	889	—	910	905
848	844	869	865	890	885	911	—
849	845	870	866	891	886		
850	846	871	867	892	887		
851	847	872	868	893	888		

MERCANTILE LAW FOR THE GERMAN EMPIRE.

FOURTH BOOK.

MARITIME COMMERCE.

FIRST PART.

General Prescriptions.

Art. 474. If a ship intended for profit by means of navigation, or a share of such ship (ship's-part), be sold, the transfer required according to the prescriptions of the common law may, for the purpose of acquiring a title to the property, be replaced by an agreement between the seller and buyer to the effect that the title to the property shall immediately pass to the purchaser.*

475. In all cases of the sale of a vessel or of a share therein, each of the parties has a right to demand that a publicly certified document respecting the sale shall be given to him at his expense.*

476. If a ship, or a share therein, be sold while the ship is engaged on a voyage, it shall, as regards the relative positions of vendor and purchaser, in default of an agreement to the contrary, be presumed that the purchaser is entitled to the profits of the current voyage, or responsible for the loss incurred in the current voyage.

477. The personal liabilities of the vendor towards third parties are in no way altered by the sale of a ship or a share therein.

* *Art.* 6 *of Introductory Law.* The prescriptions of Arts. 474 and 475 of the mercantile law apply also in case of the sale of a vessel not intended for profit by navigation, as well as in case of the sale of a share in such vessel.

478. To the appurtenances of a ship belong also the ship's boats.

In doubtful cases all articles entered upon the ship's inventory are considered to be appurtenances of the ship.

479. For the purpose of this fourth book a ship that has become unseaworthy is considered to be :—

(1) *Incapable of repair*, when the repair is altogether impossible, or cannot be done at the place where the ship is, and the ship cannot be moved to a port where the repairs might be carried out.

(2) *Unworthy of repair*, when the cost of the repair without deduction on account of the difference between old and new would amount to more than three-fourths of the previous value.

When a vessel has become unseaworthy in the course of a voyage, its previous value is to be taken as that which the ship was worth at the commencement of the voyage ; in all other cases, as that which the ship was worth before she became unseaworthy, or would with a proper outfit have been worth.

480. The seaport from which the vessel is intended to hail is to be regarded as the home port (port of registry) of the vessel.

The prescriptions of this Code, which refer to the stay of a vessel in the port of registry, can by the legislation of the various countries be extended to all or any ports situated in the same water as the port of registry.

481. In the ship's crew are included the master, the seamen, and all other persons appointed to duties on board a ship.

482. The compulsory sale of a vessel by way of execution may not be ordered if the vessel is ready to sail. Nor may a vessel ready to sail be arrested.

These prescriptions shall not apply if the debt, on account of which the compulsory sale or the arrest is to take place, was incurred for the purpose of the impending voyage.

483. When in this fourth book a distinction is made between European and extra-European ports, then all ports of the Mediterranean, the Black Sea, and the Sea of Azoff are to be considered as belonging to the former category.

SECOND PART.

Owner and Joint Ownership.

Art. 484. A shipowner is the proprietor of a vessel used by him for the purpose of making a profit by navigation.

485. The owner is answerable for any damage occasioned to a third party by the fault of any of the crew in the performance of their duties.*

486. The owner is, however, not personally liable for the claim of a third party, but is only answerable to the extent of ship and freight :—

(1) When the claim is made on account of a legal transaction, concluded by the master as such, in virtue of the authority he lawfully possesses, and not in consequence of an especial power of attorney.

(2) When the claim is occasioned by the non-performance, or the incomplete or improper performance, of any contract made by the owner, as far as the carrying out of such contract belonged to the legitimate duties of the master, no matter whether the non-performance or the incomplete or improper performance was caused through the fault of anybody belonging to the crew or not.

(3) When the claim has arisen through the fault of one of the crew.*

This prescription does not apply to the cases stated under Nos. 1 and 2, if any neglect in the performance of the contract is attributable to the fault of the owner himself, or if he has especially guaranteed the fulfilment of the contract.

487. The owner is answerable for the claims of persons belonging to the crew, and arising out of contracts respecting their services and wages, not only to the extent of ship and freight, but at the same time personally.

* *Art. 7 of Introductory Law.* The prescriptions of Arts. 485 and 486, par. 1, No. 3 of the Mercantile Law, concerning the liability of owners for the fault of one of the crew, as well as the prescriptions of Art. 734 to 739 of the Mercantile Law, concerning the liability in case of collision of ships, apply also when the employment of the vessel for navigation was not for the purpose of making a profit.

488. The owner, as such, may be sued before the court of the port of registry on account of every claim whatsoever, irrespective of the question whether he is personally responsible or only to the extent of ship and freight (Art. 480).

489. A joint-ownership exists if a vessel belonging jointly to more than one person be employed by them for the purposes of profit by means of navigation.

The prescriptions respecting joint-ownership do not apply to the case of a vessel belonging to a trading company.

490. The legal relations of the co-owners to each other are regulated in the first instance by the agreement made between them. Where no agreement has been entered into, the following prescriptions are to be applied.

491. The resolutions of the co-owners are binding with regard to the affairs of the ownership. Resolutions are passed by a majority of votes. The votes are calculated according to the number of shares held; the majority of votes in favour of a resolution exists if the person or persons, who have voted for such resolution, hold together more than a moiety of the entire vessel.

The unanimous consent of all co-owners is requisite for the adoption of resolutions intended to alter the agreement of ownership, or which are contrary to the stipulations of such agreement, or foreign to the objects of the ownership.

492. By resolution of a majority a managing owner (ship's husband, representative owner) may be appointed to carry on the business of the ownership. An unanimous vote is required in favour of a resolution appointing a managing owner, who is not himself one of the part-owners.

The appointment of a managing owner may be revoked at any time by a majority of votes, without prejudice to the claim for compensation under a contract.

493. By virtue of his appointment the managing owner is empowered to carry out all business arrangements and legal acts as against third parties, which the management of a joint-ownership ordinarily requires.

This power extends more particularly to the fitting out, maintaining, and chartering the ship; to the insurance of the freight, the cost of outfit and the outlay necessitated by cases

of average; and to the receiving of money in the ordinary course of business.

The managing owner is to the same extent authorised to represent the joint-owners before legal tribunals.

He is empowered to appoint and to discharge the master; the master has to obey only his instructions, and not the instructions, if any, which he may have received from any of the part-owners.

The managing owner is, however, not authorised in the name of the joint-ownership, or any part-owner or owners, to enter into obligations upon bills of exchange, nor to contract loans, to sell or mortgage the ship or shares therein, nor to insure the ship or shares therein, unless a special power of attorney be given to him for such purpose.

494. Any legal act which the managing owner as such may conclude within the limits of his authority, binds and entitles the joint-owners as against third parties, even when the act has been effected without giving the names of the various part-owners.

In case of responsibility incurred by the joint-owners in consequence of a business matter concluded by the managing owner, the part-owners are responsible to the same extent (Art. 486) as if the transaction had been entered into by themselves.

495. A limitation of the powers of the managing owner, as stated in Art. 493, can only be pleaded by the joint-owners against a third party, if such limitation was known to such third party at the time when the transactions concluded.

496. As far as the joint-owners are concerned, the managing owner is bound to act within the limitations which have been stipulated by them as the extent of his powers; he has also to be guided by the resolutions passed, and to carry the resolutions into effect.

In other respects the extent of his powers, even as against the joint-owners, is to be considered in accordance with the prescriptions of 493, with this modification, that for new voyages or undertakings, extraordinary repairs, as well as for the appointment or discharge of the master, he must previously obtain the consent of the joint-owners.

497. The managing owner is bound to apply the attention of a careful owner to the affairs of the joint-ownership.

498. The managing owner shall keep separate accounts respecting his management of the affairs of the joint-ownership, and shall preserve the vouchers relating thereto. He shall, on demand, give to each part-owner information of all matters connected with the joint-ownership, more particularly respecting ship, voyage and outfit; he is to allow him at all times to inspect the books, letters and papers which have reference to the affairs of the joint-ownership.

499. The managing owner shall at all times, when called upon by a resolution of the joint-owners, produce to them a balance-sheet. The adoption of the balance-sheet, as well as the approval of the management of the managing owner by the majority, does not prevent a majority from enforcing their rights.

500. Every co-owner shall contribute to the expenses of the ownership, more especially to the expenses of the outfit and the repairs of the vessel, in proportion to the amount of his share.

When a part-owner is in arrear of contributions, and when the money has been advanced by co-owners on his account, he is by law bound to pay them interest from the time the advances have been made. The advances made give the co-owners an insurable interest in the share in question. In case this interest should have been insured, the part-owner in arrear is bound to repay the expenses of such insurance.

501. If it has been decided to commence a new voyage, or after the termination of a voyage to repair the vessel or to pay off a creditor, to whom the ownership is only liable to the extent of ship and freight, every part-owner who has not assented to the resolution may exonerate himself from making the payments necessary to carry out such resolution by giving up his share without claim to indemnification.

The part-owner intending to exercise this right shall be bound to give judicial or notarial notice of such intention to the part-owners or the managing owner within three days from the date of the passing of the resolution, or, in case he was not present personally or by proxy at the passing of

the resolution, then within three days of the time that the resolution shall have been communicated to him judicially or notarially.

The share thus given up becomes the property of the remaining co-owners in proportion to the amount of their several shares.

502. The distribution of profits and losses is made in proportion to the amount of the shares.

The calculation of profits and losses and the distribution of the profits, if any, take place every time that the vessel returns to the port of registry, or whenever it has completed its voyage in another port, and the crew has been discharged.

Money coming in before the time mentioned, as far as it is not wanted for future expenses, or for satisfying claims of single part-owners against the joint-ownership, shall also be distributed and paid *ad interim* to the several part-owners in proportion to the amount of their shares.

503. Every part-owner is at liberty to sell his share at any time, either wholly or in part, without the consent of the other part-owners.

The sale of a share, whereby the vessel would lose its right to carry the flag of the Empire, can only be legally made with the consent of all co-owners.

504. The part-owner who has sold his share is, as regards his connection with the co-owners, considered to be a part-owner until he and the purchaser have notified such sale to the other part-owners or to the managing owner, and continues liable as part-owner to the other part-owners with respect to all obligations contracted previously to such notification.

The purchaser of the share, however, is, as far as the other part-owners are concerned, already liable from the moment of such acquisition.

He, like the vendor, is bound by the stipulations of the agreement of ownership, by the resolutions passed and by the transactions already entered into; the other part-owners are besides at liberty to enforce against the purchaser the fulfilment of all liabilities attaching upon the vendor with regard to the share in question, without prejudice to the purchaser's right of indemnification against the vendor.

505. A change among the part-owners does not affect the continuance of the joint-ownership.

When a part-owner dies or is declared bankrupt, the ownership is not thereby dissolved.

Notice of withdrawal on the part of a part-owner or exclusion of a part-owner are inadmissible.

506. A dissolution of the joint-ownership may be resolved upon by a majority. A resolution to sell the vessel is to be considered as a resolution to dissolve the ownership.

If it has been decided to dissolve the joint-ownership or to sell the vessel, the sale of the vessel must take place by public auction. The sale shall only take place when the vessel is not chartered for a voyage, and when it is in the port of registry or a home port. If, however, the vessel has been condemned as incapable or unworthy of repair (Art. 479), it may be sold although under charter, or even in a foreign port. The consent of all part-owners is required if a deviation from these prescriptions be contemplated.

507. As regards their personal obligation to third parties, the part-owners as such are liable only in proportion to the amount of their shares.

In case a share in a ship is sold, both vendor and purchaser are liable with respect to the personal obligations contracted for such share during the period from the sale to the notification mentioned in Art. 504.

508. The part-owners as such may be sued before the court of the port of registry (Art. 480) for every claim, no matter whether made by a part-owner or by a third party.

This provision applies also to such cases in which an action is entered only against one part-owner or against several part-owners.

509. If two or more persons agree to build a vessel for their joint account and to use the same for the purposes of navigation, then the prescriptions of Arts. 490, 491, 500, 505, as also of 507, par. 1, are to be applied, and as soon as the vessel has been finished and handed over by the builder, the prescriptions of Arts. 503, 504, 506, as also of 507, par. 2; the prescription of Art. 500 is also applicable to the building expenses.

A managing owner (Art. 492) may also be appointed before

the vessel has been finished; in this case he assumes from the time of his appointment all rights and duties of a managing owner with respect to the further management of the affairs of the joint-ownership.

510. Whoever employs for his account a vessel not belonging to himself with the view of profit by means of navigation, and either commands the same himself or entrusts the command to a master, is as against third parties considered to be the owner.

The actual owner cannot prevent anybody who brings forward a claim as ship-creditor, arising out of such employment, from enforcing his claim, unless such employment was illegal with regard to himself, and the creditor has not acted in good faith.

THIRD PART.

Master.

Art. 511. The commander of a vessel (ship-captain, master) shall exercise the care of a properly qualified master in all matters connected with his duties, but more especially in the fulfilment of contracts to be executed by him. He is liable for every damage occasioned by his fault, particularly for the damage originating in the violation of the duties imposed upon him by this and the following parts.

512. This liability of the master exists not only towards the owner but also towards the charterer, shipper and receiver of cargo, the passengers, crew, and those creditors of the vessel whose claims arise out of a credit transaction (Art. 528), more especially the bottomry-creditor.

The master is not exonerated from liability as regards the other before-mentioned persons by having acted according to instruction of the owner.

By such instruction the owner becomes also personally liable, if he was acquainted with the position of affairs at the time the instruction was given.

513. The master, before entering upon a voyage, has to take care that the vessel is in a seaworthy condition, properly furnished and fitted out, properly manned and provisioned, and

that the papers required as proofs of identity for ship, crew, and cargo are on board.

514. The master is responsible for the condition of the gear used for loading and discharging, as well as for proper stowage according to seaman's custom, notwithstanding that the stowage may be performed by special stevedores.

He has to take care that the vessel is not overloaded, and that it is provided with the necessary ballast and the requisite dunnage.

515. If the master when in a foreign country does not comply with the prescriptions there in force, more especially respecting police, customs, and revenue regulations, he shall make good the damage thereby occasioned.

In like manner, he shall make good any damage resulting from his taking in goods which he knew or ought to have known to be contraband of war.

516. As soon as the ship is ready to sail, the master shall commence the voyage at the first favourable opportunity.

Even if illness or other causes should prevent him from commanding the ship, he is not allowed unduly to delay its departure or the continuation of its voyage; on the contrary, he shall, if time and circumstances permit, apply to the owner for instructions, inform him without delay of the impediment, and make proper arrangements for the interval; otherwise he shall appoint another master. He is only responsible for the acts of such substitute in so far as he may have been guilty of carelessness in his selection.

517. From the commencement of taking in cargo to the completion of the discharge, the master and the mate shall not leave the vessel simultaneously except in urgent cases; in such an event the master shall previously appoint a substitute from amongst the officers or the rest of the crew of the vessel.

The same rule applies, before the commencement of loading and after the completion of the discharge, if the vessel is in an unsafe port or an insecure roadstead.

When the vessel is threatened by any danger, or when it is at sea, the master must be on board, unless urgent necessity should justify his absence.

518. Athough the master, in case of danger, may consult the officers of the vessel, he is nevertheless not bound by the resolutions arrived at; he remains always responsible for the measures taken by him.

519. On board of every vessel a log-book shall be kept, in which, during every voyage, all important events from the commencement of taking in cargo or ballast shall be entered.

The log-book shall be kept, under the supervision of the master, by the mate, and, in case the latter should be prevented, then by the master himself, or, under his supervision, by another duly qualified member of the crew, selected by him for this purpose.

520. Daily entries shall be made in the log-book respecting:—

The state of the wind and weather.

The courses steered by the vessel, and the distances run.

The ascertained latitude and longitude.

The state of water at the pumps.

In the log-book shall also be entered:—

The depth of water ascertained by heaving the lead.

Every employment of a pilot, and the time of his arrival and departure.

Any changes among the persons composing the crew.

The resolutions arrived at in any ship's council.

All accidents happening to ship or cargo, together with a description of these accidents.

Punishable acts committed, and the disciplinary punishments inflicted, as also births and deaths occurring on board, are likewise to be entered in the log-book.

The entries shall, so far as circumstances do not prevent it, be made daily.

The log-book shall be signed by the master and the mate.

521. The laws of the various countries may determine that on board smaller vessels (as coasters, etc.) the keeping of the log-book shall not be requisite.

522. The master shall, in conjunction with all the persons forming the crew or a sufficient number thereof, make an extended protest respecting all accidents happening on the voyage, no matter whether entailing the loss or damage of

the ship or cargo, a running into a port of distress, or other injury.

The protest shall be extended without delay, and more especially:—

In the port of destination or, when there are more than one, ports of destination, in that which the vessel first reaches after the accident.

In the port of distress, if the vessel is repaired or discharged therein.

At the first suitable place, if the voyage terminates without the port of destination having been reached.

If the master has died, or become incapable to extend the protest, the officer next in rank to him is entitled and obliged to do it.

523. The extended protest must contain a report of all important incidents of the voyage, and in particular a detailed and lucid narration of all accidents sustained, together with a statement of the means adopted to avoid or lessen the damage.

524. At all places where this law is in force notice of the protest shall be given to the competent court, such notice being accompanied by the production of the log-book and a list of all persons composing the crew.

The court shall, after receipt of the notice, proceed with the extension of the protest as soon as possible.

The day fixed for this purpose shall, whenever the circumstances of the case admit of such delay, be made publicly known in an adequate manner.

All persons having an interest in ship and cargo, as well as all other persons who may be affected by the accident, are entitled to be present at the extension of the protest either personally or by deputy.

The extension of the protest is based upon the log-book. When the actual log-book cannot be produced, or when a log-book has not been kept (Art. 521), the reason thereof is to be stated.

525. The judge is authorised to examine other persons of of the crew, if he think proper, besides those that have been produced. He may, for the sake of a more accurate investiga-

tion, put suitable questions to be answered by the master or by any other person belonging to the crew.

The master and the other members of the crew who may have been summoned shall confirm their depositions upon oath.

The original protocol drawn up respecting the extension of the protest shall be preserved and a certified copy granted on demand to each of the parties interested.

526. Legal business, which the master transacts while the vessel is in the port of registry, is only binding upon the owner when the master has acted on the authority of a power of attorney, or when there is some other special reason for his obligation to do so.

The master is entitled to engage seamen also in the port of registry.

527. When the vessel is not in the port of registry the master is, as against third parties, by virtue of his appointment authorised to transact on behalf of the owner all business matters, whether legal or otherwise, rendered necessary by the outfit, manning, provisioning and maintenance of the vessel and, in general, for the performance of the voyage.

This authority likewise extends to the entering into contracts of affreightment; it extends, moreover, to the instituting of lawsuits having reference to matters connected with his duties.

528. The master is, however, only entitled to contract loans, to make purchases on credit and to conclude similar transactions on credit, when they are necessary for the maintenance of the vessel and the completion of the voyage, and only so far as is necessary to supply the actual requirement. He is only at liberty to enter into a bottomry transaction when it is unavoidably requisite for the completion of the voyage, and only so far as is necessary to supply the actual requirement.

The validity of the transaction depends neither upon the actual application of the money, nor upon the prudence of the selection made between various modes of raising money, nor upon the question whether the master had at his disposal the money required, except when the third party acted in bad faith.

529. The master is not authorised to conclude transactions on the personal credit of the owner, nor more especially to contract debts upon bills of exchange on his behalf, unless specially authorised by a power of attorney given him to that effect (Art. 486, par. 1, No. 1). Instructions and orders as to his duties, which the master receives from the owner, are not sufficient to set up a personal liability of the owner in favour of a third party.

530. The master is empowered to sell the vessel only in cases of urgent necessity, and only when such necessity has been ascertained by the local court after hearing the opinion of experts, and with the assistance of the German consul when one is at hand.

Should there be neither a court of law nor any other authority on the spot to undertake the inquiry, the master shall, in order to justify his actions, take the opinion of experts, and when this is not possible, provide himself with other proofs.

The sale must take place publicly.

531. Any owner, who has placed restrictions upon the legal authority of the master, can only plead against third parties non-observance of such restrictions, if he proves that they were known to such parties.

532. Should the master, without special instructions, have advanced money belonging to himself for account of the owner, or made himself personally liable, he has no greater claim against the owner for indemnification than a third party.

533. Any transaction within the scope of the master's legal authority, entered into by him in his capacity as commander of the vessel, gives the owner a legal claim against a third party, but renders him at the same time responsible to the extent of ship and freight, whether his name appear or not.

The master himself does not become responsible to a third party by such legal transaction, unless he guarantees its fulfilment or exceeds his authority. The liability of the master in conformity with Arts. 511 and 512 is, however, not excluded hereby.

534. The prescriptions of Arts. 526 to 530 are likewise binding upon the owner as to the extent of the authority of the

master, in so far as this authority has not been restricted by the owner.

The master is bound to transmit to the owner continual information of the condition of the vessel, the incidents of the voyage, the contracts entered into by him, and the lawsuits that may have become necessary; and, when circumstances permit, to apply to the owner for instructions on all important occasions, particularly in the cases contemplated by Arts. 528 and 530, or when he is compelled to alter or abandon a voyage, or when extraordinary repairs and outlay for necessaries are rendered necessary.

The master is only in case of necessity permitted to undertake extraordinary repairs and outlay, even when he may be able to defray the expense with funds belonging to the owner over which he may have control.

If he is unable to procure the requisite funds to provide for an urgent necessity in any other way than by bottomry or by the sale of superfluous appurtenances or provisions of the ship, he shall adopt that alternative which entails the least detriment upon the owner.

After his return to the port of registry, and otherwise as often as it is demanded, he shall render his account to the owner.

535. The master shall take every possible care of the cargo during the voyage in the interests of those concerned therein.

When special measures are required in order to avoid or lessen a loss, it is his duty to protect the interest of those concerned in the cargo as their representative; to take their instructions, if possible, and, so far as circumstances admit, to carry the same into effect; otherwise, however, to act according to his own discretion, and generally to take every possible care that those interested in the cargo are speedily informed of such occurrences, and of the measures thereby rendered necessary.

He is particularly in such cases authorised to discharge the whole or a portion of the cargo; in extreme cases, if on account of imminent deterioration or for other causes a considerable loss cannot be otherwise averted, to sell or hypothecate it for the purpose of providing means for its preservation and further

transport; to reclaim it in case of capture or detention; or, if it shall have been otherwise withdrawn from his charge, to take all extra-judicial and judicial steps for its recovery.

536. When the prosecution of the voyage in its original direction is prevented by an accident the master is at liberty either to continue the voyage in another direction, or to suspend it for a shorter or longer period, or to return to the port of departure, according to the circumstances and to the instructions received, which latter are to be adhered to as closely as possible.

In the case of the cancelling of the contract of affreightment he shall act according to the provisions of Art. 632.

537. Even in the cases referred to in Art. 535, the master has no right to conclude any business transaction upon the personal credit of the parties interested in the cargo, unless by virtue of a power of attorney authorising him to do so.

538. With the exception of the cases stated in Art. 535, the master has only the right to hypothecate the cargo, or to dispose of portions thereof by sale or conversion, in so far as it is necessary for the purpose of prosecuting the voyage.

539. If the necessity is based upon a general average, and if the master has an option of remedies, he shall take that alternative which entails the least detriment to the parties interested.

540. When the case is not one of a general average the master shall not take a bottomry bond on the cargo, or dispose of portions of the same by sale or conversion, unless he cannot provide for his requirements in any other way, or unless the adoption of other measures would cause a disproportionate damage to the shipowner.

In such cases, also, he can only hypothecate or take a bottomry bond on the cargo together with ship and freight (Art. 680, par. 2).

He shall resolve upon taking a bottomry bond in preference to sale, unless a disproportionate damage would be caused thereby to the shipowner.

541. Taking a bottomry bond on the cargo, or disposing of portions of the same by sale or conversion, shall be considered in the cases contemplated in Art. 540 as credit transactions

(Arts. 528 and 754, No. 6) entered into for account of the shipowner.

542. The enactments of Art. 528, par. 2, are to be applied with respect to the validity of legal transactions entered into by the master in the cases contemplated by Articles 535 and 538 to 540.

543. The master shall place to the credit of the owner's account every amount which, in addition to the freight, he may receive from the charterer, shipper, or consignee of the cargo, such as primage or anything in the shape of remuneration or gratuity, or under any denomination whatsoever.

544. The master shall take no goods on board for his own account without the consent of the owner. If he acts to the contrary, he shall pay to the owner the highest freight charged at the loading port for such voyages and goods at the time of shipment, without prejudice to the claim of the owner for compensation of any higher damage that may be caused to him.

545. The master can be discharged by the owner at any time, any agreement to the contrary notwithstanding, but without prejudice to his claim of indemnity.

546. When the master has been discharged because he has been found to be incapable, or because he neglects his duty, he shall receive only so much of his wages, including all other stipulated emoluments, as he has earned up to the time of his discharge.

547. When the master, who has been engaged for a particular voyage, is discharged, because such voyage cannot be commenced or be continued on account of war, embargo, or blockade, or on account of a prohibition of importation or exportation, or from any other accident happening to ship or cargo, he shall in such cases also receive only so much of his wages, including all other stipulated emoluments, as he has earned up to that time. The same rule applies when a master, appointed for an indefinite period, is discharged for one of the reasons given after he has undertaken the performance of a particular voyage.

If in any of the above cases the discharge takes place in the course of the voyage, the master is entitled at his option

either to a free passage to the port where he has been engaged, or to a corresponding indemnity.

When a claim for a free return passage is established according to the prescriptions of this code, it includes also the maintenance during the voyage.

548. When a master, who has been engaged for an indefinite period, is discharged for other reasons than those stated in Arts. 546 and 547 after he has undertaken a particular voyage, he shall receive, besides what is due to him, according to the prescriptions of Art. 547, two months' wages if the discharge has taken place in a European port, or four months wages if it has taken place in an extra-European port. In no case, however, shall he be entitled to more than he would have received if he had completed the whole voyage.

549. Should the pay have been fixed at a lump sum for the whole voyage, the wages earned in the cases contemplated by Arts. 546-548 shall be calculated in proportion to the services rendered, to the part of the voyage actually performed, and to the lump sum originally fixed. As basis for the computation of the wages, with respect to the two or four months stipulated by Art. 548, shall be taken the average duration of the voyage, including the time of loading and discharging, due regard being had to the condition of the vessel.

550. When the return voyage of the vessel does not terminate in the port of registry, the master, who has been engaged for the voyage out and home, or for an unlimited period, shall receive a free return passage to the port where he had been engaged, with his wages during the voyage, or, at his option, a corresponding indemnity.

551. When the master has been engaged for an unlimited period, he is bound as soon as he has entered upon a voyage to remain in such service until the vessel has returned to the port of registry, or to a home port, and its discharge has been completed.

He can, however, demand his discharge after two years' service from the date of his first departure, when the vessel at the time of his giving notice is in a European port, or after three years' service when it is in an extra-European port. He shall in such a case allow the owner sufficient time to

replace him, and continue his duties meanwhile, and, at all events, complete the current voyage.

If the owner immediately after receiving the notice gives orders for the return voyage, the master is bound to bring the vessel home.

552. If the master be dismissed against his will, the share which he may have in the vessel as part-owner by virtue of an agreement with the other owners, must at his demand be taken over and paid for by the other owners at a valuation to be made by competent persons. This right of the master ceases if he unduly delays the notice that he intends to avail himself of it.

553. When after the commencement of the voyage the master is invalided or wounded, the owner has to bear the expenses of his care and restoration to health—

(1) If the master returns in the vessel, and if the return voyage terminates in the port of registry, or in the port where he has been hired, up to the termination of the return voyage.

(2) If he returns in the vessel and the voyage does not terminate in either of the aforesaid ports, up to the expiration of six months after the termination of the return voyage.

(3) If it has been necessary to leave him behind ashore during the voyage, up to the expiration of six months after the time when the vessel has continued its voyage.

In the two latter cases he is also entitled to a free return passage (Art. 547), or, at his option, to a corresponding indemnity.

When the master has been invalided or wounded after the commencement of the voyage, he shall receive, if he returns in the vessel, his wages, including all other stipulated emoluments, until the termination of the return voyage, and, if he has been left behind ashore, up to the day on which he leaves the vessel.

If the master has been injured in the defence of the vessel, he is besides entitled to a fair reward.

554. When the master dies after having entered upon his duties, the owner shall pay his wages, including all other

stipulated emoluments, up to the day of his death; if death has occurred after the commencement of the voyage, the owner shall also bear the funeral expenses.

In case the master be killed in defence of the vessel, the owner shall besides make a fair compensation.

555. The master shall take care to have the protest extended when the vessel has been lost, and in general he shall protect the interest of the owner as long as it is necessary. He shall continue to receive during such period his wages and payment of the cost and maintenance. He can further claim a free return passage (Art. 547), or, at his option, a corresponding indemnity.

FOURTH PART.

Freight earned by the Conveyance of Goods.

Art. 556. The contract of affreightment for the conveyance of goods refers either—

(1) To the whole vessel, or to a proportionate part of, or to a specially defined space in, the same; or,

(2) To separate parcels of goods (general cargo).

557. When the whole vessel, or a proportionate part of, or a specially defined space in, the same, is being let, each party may demand that with respect to the contract a document in writing be executed (charter-party).

558. When a whole vessel is chartered, the cabin is not included, but without the consent of the charterer, no goods are allowed to be shipped in the cabin.

559. In case of a contract of affreightment of whatever nature the shipowner* is bound to deliver the vessel in a seaworthy condition (Art. 556).

He is answerable to the charterer for every damage arising from the defective condition of the vessel, unless the defects

* The original expression is "Verfrachter,"—one who lets the vessel; the English language not having a word corresponding to this expression, I have taken "shipowner" to designate the party who in almost all cases is the only one justified to let a vessel either himself or through his legal representative.

could not have been discovered in spite of the application of the care of a careful shipowner.

560. The master shall, for the purpose of taking in the cargo, remove the vessel to the place assigned to him by the charterer, or, when the vessel has been chartered by more than one party, then by all the charterers.

The master shall remove the vessel to the loading-place customary at the port, if the aforesaid notice has not been given in time, or if the same place is not assigned by all the charterers, or if the depth of the water, the safety of the vessel, or the local regulations or arrangements do not permit compliance with their orders.

561. In default of an agreement to the contrary, or other regulations at the port of loading, or if none exist, then of other local customs, the goods shall be brought free alongside of the vessel by the charterer, while the expense of taking them into the vessel shall be borne by the shipowner.

562. The shipowner is bound to accept other goods tendered to him by the charterer for shipment to the same port, instead of those originally agreed to, provided his position is not thereby altered to his disadvantage.

This prescription does not apply when the goods have been specially named in the contract and not merely generally described by their class or sort.

563. The charterer or shipper who gives a wrong description of the goods shipped, or who ships contraband of war, or goods the exportation of which, or their importation into the port of destination, has been prohibited, or who violates at the shipment the legal regulations, and more especially the laws of police, excise and customs—if any blame attaches to him—becomes not only answerable for the delay caused through his conduct and for all other loss to the shipowner, but also to all other parties mentioned in Art. 512, par. 1.

His liability towards the other parties is not excluded by the fact of his having acted with the consent of the master.

The seizure of the goods gives him no right to refuse the payment of the freight.

When the goods endanger the vessel or the remainder of

the cargo, the master may land them, or, on urgent necessity, throw them overboard.

564. Whoever ships any goods on board without the knowledge of the master shall likewise be answerable for any damage resulting therefrom, in conformity with Art. 563. The master may reland such goods, or, if necessary, throw them overboard, if they endanger the vessel and the rest of the cargo. When the master has kept them on board, they must pay the highest freight charged at the loading port, at the time of shipment, in respect to such voyages and goods.

565. Without permission being given by the charterer, the shipowner is not at liberty to ship the goods in another vessel. If he acts contrary to this prescription, he is answerable for all damage thereby caused, unless the damage would have arisen and remained at the debit of the charterer, even if the goods had not been shipped in another vessel.

This Article does not apply to transhipments in other vessels, which in cases of distress take place after the commencement of the voyage.

566. Without the consent of the shipper his goods shall not be shipped on deck or suspended at the sides of the vessel.

The laws of the various countries may decree that this enactment, as far as it relates to deckloads, shall not apply to the coasting trade.

567. When the whole vessel has been chartered, the master shall inform the charterer as soon as he is ready and prepared to take the cargo on board.

The loading-days count from the day after that on which the notice has been given.

If so agreed, the shipowner shall wait for the cargo even beyond the loading days (days on demurrage).

Unless an agreement to the contrary has been made, no extra remuneration can be demanded for the time fixed for loading. The charterer is, however, bound to pay the shipowner an indemnity for the extra time (demurrage).

568. If the loading-days have not been fixed by contract, they are determined by the local regulations at the port of shipment, and in default by the local custom. Should such

local custom not exist, a fair period of time according to the circumstances of the case shall be taken as the time for loading.

When it has been contracted that a vessel shall wait beyond the lay-days on payment of demurrage, but when the duration of the time has not been fixed, it shall be taken at fourteen days.

When the contract contains only the sum payable for demurrage, it shall be considered that, although the vessel is bound to lie on demurrage, the duration of the time has not been settled.

569. When the duration of the loading-days, or the day on which they shall expire, has been fixed by agreement, the days on demurrage begin at once at the expiration of the loading-days.

In default of such agreement, the days on demurrage commence only after the shipowner has given notice to the charterer, that the loading-days have expired. The shipowner can give notice to the charterer, even before the termination of the loading-days, on what day he considers them expired. In this case no further notice on the part of the shipowner is required at the expiration of the loading-days and the beginning of the days of demurrage.

570. After the expiration of the loading-days, or in case a further term on demurrage has been agreed to, the shipowner, after the expiration of such term, is not obliged to wait any longer for the cargo. He is, however, bound to give to the charterer at least three days' notice before the expiration of the loading-days, or of the days on demurrage, of his intention not to wait any longer.

When this has not been done, the loading-days, or the days on demurrage, do not expire until the notice has been given and three days have elapsed subsequently to its delivery.

The three days mentioned in this Article shall in all cases be considered to mean running calendar days without interruption.

571. The notices of the shipowner, mentioned in Arts. 569 and 570, need not be given in any particular form. When the charterer refuses satisfactorily to acknowledge the receipt

of such a notice, the shipowner may cause a public document to be executed thereupon at the expense of the charterer.

572. When the demurrage has not been stipulated by contract, it shall be fixed in an equitable manner.

In fixing the demurrage the merits of the case, more particularly the wages, the cost of keeping the crew and the loss of freight falling upon the shipowner, shall be taken into consideration.

573. In calculating the loading-days and the days on demurrage, they are counted as running days, without interruption; more particularly are included Sundays and holidays, as well as those days on which the charterer is accidentally prevented from delivering cargo.

Those days are, however, to be excluded on which, by reason of wind and weather, or from any other accident—

(1) The delivery to the vessel not only of the stipulated, but also of every description of cargo; or,

(2) The taking in of the cargo

has been prevented.

574. The shipowner is entitled to demurrage for the days during which he has been longer detained, owing to the delivery of any kind of cargo being prevented, even when such prevention has occurred during the loading-days. For those days, however, during which he is detained in consequence of any prevention having arisen in the taking in of the cargo, no demurrage is due, even if such prevention has occurred during the days on demurrage.

575. When local regulations or local customs determine the duration of the loading-days according to Art. 568, the prescriptions of Arts. 573 and 574 apply to the calculation of the same only so far as the local regulations or local customs do not decide anything to the contrary.

576. When the shipowner has stipulated that the loading must be finished by a certain day, he is not obliged to wait any longer because the delivery of every description of cargo (Art. 573, par. 2, No. 1) has been prevented.

577. In case the shipowner has to receive the cargo from a third party, and when such third party cannot be found, notwithstanding that the readiness of the shipowner to take the

cargo on board has been made known in the manner customary at the place, or when such third party refuses to deliver the cargo, the shipowner shall at once inform the charterer thereof, and only wait for the cargo until the expiration of the loading-days, but not during the days on demurrage that may have been stipulated, unless he should receive instructions to the contrary within the loading-days from the charterer or his representative.

When an undivided period of time has been fixed for loading and discharging the vessel together, one-half of such period shall be considered in the above-mentioned case as the time stipulated for loading.

578. If required by the charterer, the shipowner is bound to enter upon the voyage even without the full cargo contracted for. In such a case, however, he shall not only receive the full freight and demurrage, if any, but he may also demand additional security for so much, as the incomplete cargo does not offer sufficient security for the full freight. The charterer shall, besides, repay any additional expenses arising to the shipowner on account of the incompleteness of the cargo.

579. Should the charterer not have completed the delivery of the cargo at the expiration of the time, during which the shipowner is bound to wait for the same (lay-days), the shipowner is at liberty, if the charterer does not withdraw from the contract, to commence the voyage, and to enforce the claims mentioned in Art. 578.

580. Before the voyage has been commenced, whether it be a single or a compound voyage, the charterer may withdraw from the contract, on paying one-half of the stipulated freight as dead freight.

In the sense of this prescription, the voyage shall be considered as having been commenced—

(1) When the charterer has already given the master his sailing orders;

(2) When the charterer has already delivered the cargo wholly or in part, and the lay-days have expired.

581. When the charterer avails himself of the right mentioned in Art. 580 after delivery of cargo, he shall likewise bear the expenses of loading and discharging, and pay demur-

rage for the time occupied by the unloading, so far as it has not been completed within the period fixed for the loading (Art. 572). The unloading shall be effected with all possible despatch.

The shipowner shall submit to the delay caused by such unloading even when it exceeds the stipulated time. He shall be entitled to demurrage for the period after the expiration of the same, and to an indemnity for the loss occasioned through any such excess of time, provided that such loss exceed the amount of such demurrage.

582. After the voyage has been commenced in the sense of Art. 580, the charterer can only withdraw from the agreement, and demand the unloading of the goods, on paying the full freight as well as all other claims of the shipowner (Art. 614), and on paying or securing the claims mentioned in Art. 615.

In case of such unloading the charterer shall not only pay the additional expenses thereby incurred, but also indemnify the shipowner for the loss caused by the delay.

The shipowner is not obliged to alter the voyage, or to run into a port, for the purpose of such unloading of the goods.

583. The charterer shall only pay two-thirds, instead of the full amount of the freight, as dead freight, in case the vessel has been chartered for the round, or when the vessel, for the purpose of performing the contract, has to make a voyage from another port in order to take in the cargo, and when in both these cases such withdrawal has been notified before commencement, in the sense of Art. 580, of the return voyage or the voyage out of the loading port.

584. In other compound voyages the shipowner shall receive the full amount of the freight as dead freight, if the charterer declares such withdrawal previous to the commencement of the last part of the voyage in the sense of Art. 580; a suitable percentage shall, however, be deducted, if there is reason to suppose that, by the cancelling of the contract, the shipowner has saved expense, and has had an opportunity of earning another freight.

In no case shall such deduction exceed one-half of the freight.

585. When the charterer delivers no cargo at the expiration

of the waiting time, the shipowner is no longer bound by the contract, and is entitled to enforce against the charterer all such claims as he would have had, if the charterer had withdrawn from the same (Arts. 580, 583, 584).

586. The freight, which the shipowner receives for other goods forming part of cargo, shall not be deducted from the dead freight.

The prescription of Art. 584, par. 1, is not affected.

The right of the shipowner to claim dead freight does not depend upon the actual performance of the voyage mentioned in the contract.

The right of the shipowner to demand demurrage and payment of all other claims which he may be entitled to make, (Art. 614) is not excluded by the dead freight.

587. If a proportionate part or a specially defined space of the vessel has been chartered, the prescriptions of Arts. 567-586 shall apply with the following modifications, *viz.* :—

(1) In those cases where, in accordance with these prescriptions the shipowner ought to have been satisfied with a portion of the freight, he shall receive the full freight as dead freight, unless all the charterers withdraw from the contract or deliver no cargo.

The freight for such goods, however, which the shipowner engages in lieu of those not delivered, shall be deducted from the full freight.

(2) In the cases contemplated by Arts. 581 and 582 the charterer cannot demand the unloading of his goods if the voyage would thereby be delayed, or a transhipment be necessitated, unless all the charterers concerned give their consent. The charterer shall besides repay all costs and make good any loss caused by such unloading.

Should all charterers avail themselves of the right of such withdrawal the provisions of Arts. 581 and 582 remain in force.

588. When the contract of affreightment has been made for a general cargo, the charterers shall deliver the goods without delay, at the demand of the master.

If the charterer is behind time, the shipowner is not bound

to wait for the delivery of the goods; the charterer being obliged to pay the full freight, if the voyage has been commenced without the goods. Allowance is, however, to be made for the freight of such goods as the owner takes in lieu of those not delivered.

The shipowner intending to enforce such claim for the full freight against the charterer in arrear shall, under penalty of the loss of such claim, give notice to the charterer thereof previous to the departure of the vessel. The prescriptions of Art. 571 apply to the aforesaid notice.

589. The charterer can, after the shipment has been effected, withdraw from the contract, and demand the discharge of his goods on paying the full freight, as well as all other claims of the shipowner (Art. 614), and on paying or securing all such claims as mentioned in Art. 615, only in accordance with Art. 587, No. 2, par 1.

The prescriptions of Art. 582, par. 3, apply.

590. When a vessel is laid on the berth for a general cargo, and the time of departure has not been stipulated, the judge shall, on the application of the charterer, and according to the circumstances of the case, fix the date beyond which the commencement of the voyage shall not be delayed.

591. In all cases of contracts of affreightment the charterer shall provide the master with all documents required for the shipment of his goods within the period during which such shipment ought to have been effected.

592. The master shall, for the purpose of discharging the cargo, remove the vessel to such place, as is assigned to him by the party to whom the cargo is to be delivered (consignee), or, if the cargo is to be delivered to several parties, to such place as is assigned to him by all the consignees.

If the aforesaid order has not been given in due time, or if the same place is not assigned by all the consignees, or if the depth of the water, the safety of the vessel, or the local regulations or arrangements do not permit compliance with such orders, the master shall remove the vessel to such place of discharge as is customary at the port.

593. In default of an agreement to the contrary, or of other regulations at the port of discharge, or, if none exist, then,

of other local customs, the expenses of unloading out of the vessel are to be borne by the shipowner, but all other expenses relating to the discharge are to be borne by the consignees of the cargo.

594. When the whole vessel has been chartered, the master shall give notice to the consignee as soon as he is ready and prepared to discharge.

Should the consignee be unknown to the master, the notice shall be given by public advertisement in the manner customary at the place.

The days for discharging commence with the day after that on which the notice has appeared.

Beyond the time fixed for discharging the shipowner has only to wait for the removal of the cargo, when an agreement has been made to that effect (days on demurrage).

Unless an agreement to the contrary has been made, no extra allowance can be demanded for the time fixed for the discharge. For the extra time, however, the shipowner shall receive an indemnity (demurrage).

As regards the amount of the demurrage the prescriptions of Art. 572 apply.

595. If the days for discharging have not been fixed by contract they are to be determined by the local regulations at the port of discharge, and, in default, by the local custom. Should no such local custom exist, a fair period of time, according to the circumstances of the case, shall be taken as the days for discharging.

In case it has been contracted that a vessel shall wait beyond the lay-days on payment of demurrage, but the duration of such time on demurrage has not been fixed, it shall be taken at fourteen days.

When the contract contains only the amount payable for demurrage, it is to be presumed that, although the vessel is bound to lie on demurrage, the duration of such time has not been finally agreed upon.

596. Should the duration of the days for discharging, or the day on which they shall expire, have been fixed by agreement, the days on demurrage begin at once with the expiration of the days for discharging.

In default of such an agreement the days on demurrage commence only after the shipowner has given notice to the consignee that the days for discharging have expired. The shipowner can give notice to the consignee, even before the expiration of the days for discharging, on what day he considers them at an end. In this case no further notice on the part of the shipowner is required at the expiration of the days for discharging and at the beginning of the days on demurrage.

The prescriptions of Art. 571 apply to such notices required of the shipowner as are mentioned in par. 2.

597. In calculating the days for discharging, and the days on demurrage, they are counted as running days without interruption, more particularly Sundays and holidays are included, as well as such other days on which the consignee had been accidentally prevented from receiving the cargo.

Excluded are, however, such days on which, by reason of wind and weather or by any other accident—

(1) The conveyance not only of the goods on board the vessel but of every description of cargo from the ship to the shore ; or,

(2) The unloading out of the vessel

has been prevented.

598. The shipowner is entitled to demurrage for all days during which he is compelled to wait in consequence of an impossibility to convey any description of cargo from ship to shore, even should such prevention occur during the days stipulated for discharging. For those days, however, during which he is compelled to wait in consequence of an impossibility to unload the vessel, no demurrage is due, even should such prevention occur during the days on demurrage.

599. When local regulations or local customs determine the duration of the days for discharging according to Art. 595, the prescriptions of Arts. 597 and 598 apply to the calculation of the same only so far as the local regulations or local customs do not decide anything to the contrary.

600. In case the shipowner has stipulated that the discharge must be finished by a certain day, he is not obliged to wait any longer because the conveyance of any description

of cargo from ship to shore has been prevented (Art. 597, par. 2, No. 1.)

601. Should the consignee declare his readiness to receive the goods but delays their reception beyond the time accorded to him, the shipowner may cause their deposit in a public warehouse or in any other safe manner, giving notice thereof to the consignee.

The master is bound to proceed as herein described, and to give at the same time notice thereof to the charterer, in case the consignee declines to take delivery of the goods, or withholds any satisfactory answer upon the notice prescribed in Art. 594, or if the consignee is not to be found.

602. In so far as, by the delay of the consignee or by any proceeding caused by the depositing of the goods, the days for discharging have been exceeded without any fault of the master, the shipowner is entitled to demurrage (Art. 594), but without prejudice to his right to claim higher damages for such detention, provided it does not come within the period which he has contracted to wait on demurrage.

603. The prescriptions of Arts. 594-602 likewise apply if a proportionate part or a specially defined space of the vessel has been chartered.

604. The consignee of any general merchandise is bound to receive the same without any delay at the master's demand. In case the consignee is not known to the master, such demand shall be made by public advertisement in the manner customary at the place.

The provisions of Art. 601 apply in respect to the right and the obligation of the master to deposit the goods. The notice to the charterer prescribed in Art. 601 may be given by public advertisement in the manner customary at the place.

For those days by which, by the delay of the consignee, or by any proceeding caused by the depositing of the goods, the period within which the vessel ought to have been discharged has been exceeded, the shipowner is entitled to demurrage (Art. 594), without prejudice to his right to claim any higher damages.

605. If the whole vessel, or a proportionate part, or a specially defined space of the same, has been chartered, and

the charterer has effected any re-charters for the conveyance of any general merchandise, the prescriptions of Arts. 594-602 remain in force respecting the rights and duties of the original owner of the vessel.

606. The shipowner is answerable for any damage arising through loss of or injury to the goods, from the time of their reception until their delivery, unless such loss or injury has been caused by circumstances which could not be prevented by the attention of a careful shipowner.

607. The shipowner is not answerable for jewels, objects of art, specie, and valuable documents, unless the description and value of the articles were declared to the master at the time of shipment.

608. Before the consignee takes delivery of the goods, he, as well as the master, may, in order to ascertain their condition or quantity, cause a survey to be made by the competent authority, or by such surveyors as are officially appointed for the purpose.

If circumstances permit, the adverse party, if on the spot, shall be summoned to attend at these proceedings.

609. When the survey was not effected before delivery was taken, the consignee is bound to cause a supplementary survey of the goods, in conformity with Art. 608, to be held at the latest on the second working day after the day of the reception, under penalty of forfeiting all claims for damage or partial loss, no matter whether such loss and damage have been externally perceptible or not.

This prescription does not apply to any losses and damages which have been caused purposely or by the grave negligence of a person belonging to a crew.

610. The expenses of the survey shall be borne by the party who has demanded the same.

Should, however, the survey take place at the request of the consignee, and should a loss or damage be ascertained, for which the shipowner is answerable, the expenses have to be borne by the latter.

611. When, in virtue of the contract of affreightment, compensation has to be made for the total or partial loss of goods, such compensation shall only be for the ordinary trade

value or in default for the ordinary value of goods of the same description and quality at the port of destination of the goods at the commencement of the discharge of the ship, or if the cargo is not discharged at that port, then at the time of her arrival; deduction being made of any amounts saved for customs duties and other expenses as well as freight in consequence of such loss.

When the port of destination of the goods is not reached, the place where the voyage ends is substituted, or if it ends by the loss of the ship, then the place to which the goods may be brought in safety.

612. The prescriptions of Art. 611 are also applicable to those goods for which the shipowner, according to Art. 541, must make compensation.

If, in a case where goods have been disposed of by sale, the net proceeds exceed the value according to Art. 611, then, the net proceeds take the place of the latter.

613. When compensation must be made for any damage to goods on the basis of the contract of affreightment, the compensation shall consist in the difference between the sale value of the goods in their damaged state and the ordinary trade value or ordinary value in a sound state at the time of the discharge of the vessel; deduction being made of any amounts saved for customs duties and other expenses in consequence of the damage.

614. By taking delivery of the goods, the consignee becomes liable to pay the freight and all other charges in conformity with the contract of affreightment or bill of lading, on the basis of which the delivery is made, and further to pay demurrage, if any, to refund Customs' duties, and other outlays and besides to fulfil all other obligations devolving upon him.

The shipowner shall deliver the goods to the consignee on payment of the freight and on fulfilment of all other obligations.

615. The shipowner is not bound to deliver the goods before the amounts due from the same for general average, salvage, assistance, or bottomry have been paid, or security given for the amounts.

If a bottomry bond has been given for account of the ship-

owner, this prescription holds good in spite of the shipowner's obligation, to free the goods from their liability to the bottomry before they are delivered.

616. The shipowner is not obliged to accept the goods in payment for the freight, whether they are spoiled altogether or damaged or not.

When, however, receptacles filled with liquids have leaked during the course of the voyage to such an extent, that they have become altogether or for the most part empty, they may be left to the shipowner in payment of the freight and of his other claims (Art. 614.)

By an agreement that the shipowner is not answerable for leakage or by the clause, "free from leakage," such right is not prejudiced, but it ceases altogether as soon as the packages have passed into the custody of the consignee.

Should the freight have been fixed in a lump sum, and only some packages totally or for the most part emptied, they can be left to the shipowner in proportionate payment of the freight and of his other claims.

617. No freight is due for goods lost by any accident; and any freight prepaid shall be returned unless an agreement to the contrary has been made.

This prescription applies also when the whole ship or a proportionate part or a specially defined space of the same has been chartered. If in such a case the freight has been stipulated in a lump sum, the loss of a part of the goods gives a right to a proportionate deduction from the freight.

618. Notwithstanding any non-delivery, the freight must be paid for goods that have been lost in consequence of their natural condition, more particularly by vice-proper, shrinkage, or ordinary leakage, as well as for animals that have died during the voyage.

The provisions concerning general average determine to what extent restitution shall take place of the freight for goods sacrificed in cases of general average.

619. For goods the conveyance of which has been undertaken without the freight having been agreed upon, the current freight shall be paid which rules in the port of loading at the time of shipment.

For goods beyond the quantity, contracted for with the charterer, which may have been accepted for conveyance, such freight shall be paid as is in proportion to the originally agreed freight.

620. When the freight has been stipulated for measure, weight, or quantity, it shall in doubtful cases be considered, that the measure, weight, or quantity delivered, not that taken in, shall decide the amount of freight due.

621. Primage, gratuities, etc., cannot be demanded in addition to the freight, unless they have been previously agreed upon.

The ordinary and extraordinary expenses of navigation, as: pilotage, harbour dues, light dues, towage, quarantine expenses, charges for cutting passages through the ice, etc., are to be borne by the shipowner alone, unless an agreement to the contrary was effected; even if the contract of affreightment should not specially bind him to perform the acts causing this expenditure.

Cases of general average, as well as cases where expenses are incurred for the preservation, saving, or rescuing of the cargo, are not affected by the prescriptions of par. 2.

622. When a time charter has been entered into, it commences, in default of an agreement to the contrary, from the day following that, on which the master gives notice that he is ready and prepared to take in cargo, or to proceed in ballast; should, however, in the latter case, such notice not have been given on the day before proceeding on the voyage, the freight shall be paid from the day on which such voyage is commenced.

When demurrage or days on demurrage have been agreed upon, the freight per diem begins in all cases only from the day on which the commencement of the voyage takes place.

The freight per diem terminates with the day on which the discharge is completed.

When the voyage is delayed or interrupted without the fault of the shipowner, the freight must be continued to be paid for the intermediate period, subject to the prescriptions of Arts. 637 and 638.

623. A shipowner has a lien upon the goods for the claims mentioned in Art. 614.

The lien exists as long as the goods are retained or deposited; it remains in force even after the delivery, if it is legally enforced within thirty days after the completion of such delivery, and if the goods are still in possession of the consignee.

The prescriptions for the lien of the carrier (Art. 366, par. 3, and Art. 368), apply also to the lien of the shipowner.

The notice of a compulsory sale of goods held as security provided for by Art. 1,234, par. 1, of the Civil Code, as well as the notifications provided for in Arts. 1,237 and 1,241 of the Civil Code are to be directed to the consignee. If he cannot be found, or if he refuses to take delivery of the goods, the notice and the notifications shall be directed to the shipper.*

624. In case of a dispute concerning the claims of the shipowner, the latter is bound to give up the goods as soon as the sum in dispute has been publicly deposited.

After the delivery of the goods the shipowner is entitled to receive the sum so deposited, on giving sufficient security for it.

625. When the shipowner has parted with the goods, he cannot make the charterer responsible for any such claims as he may have against the consignee (Art. 614). Only in case the charterer would make a profit out of the loss of the shipowner, the latter can go against the charterer.

* German Civil Code.

Sec. 1,234. The creditor having a lien is bound, formally, to notify to the proprietor that he intends to sell, and at the same time to state the amount on account of which the sale is to take place. The notice can only be given after the date when the right of sale begins. The notice may, however, be omitted in cases where it cannot be served.

The sale shall not take place until one month has passed since the notice of sale was given. When the notice cannot be served, then the month is calculated from the date on which the period of right of sale commenced.

Sec. 1,237. The time and place of sale shall be publicly made known, with a general description of the object under lien. The proprietor and third parties, having rights on the object under lien, shall receive special notice. The notice may, however, be omitted in cases where it cannot be served.

Sec. 1,241. The creditor having a lien shall immediately notify to the proprietor the sale of the object under lien, and the result of the same, unless the notice cannot be served.

626. When the shipowner has not delivered the goods, and availed himself of his right of sale without, however, being fully compensated by the sale of such goods, he can make the charterer responsible for so much of his claim arising out of the contract of affreightment, made between him and the charterer, as had not been previously satisfied.

627. In case the consignee does not take delivery of the goods, the charterer is obliged to satisfy the shipowner for the freight and his other claims, according to the contract of affreightment.

Should delivery of the goods be taken by the charterer, the prescriptions of Arts. 592-624 apply in such a manner, that the charterer takes the place of the consignee. In such a case the shipowner has more particularly the right of retention and lien in respect to his claims upon the goods, in conformity with the prescriptions of Arts. 623 and 624, as well as the right stipulated in Art. 615.

628. The contract of affreightment is at an end, and neither party is bound to indemnify the other, if, before the commencement of the voyage, and through an unforeseen incident—

(1) The vessel is lost, particularly—

If it is lost by accident.

If it has been condemned as incapable or unworthy of repair (Art. 479), and if, in the latter case, it is sold forthwith by public auction.

If it is captured by pirates.

If it is seized or detained and condemned as good prize.

Or,

(2) The goods described not merely by their class or sort, but specially defined in the contract of affreightment, are lost.

Or,

(3) The goods, not specially defined in the contract of affreightment, are lost after they have been delivered on board, or received by the master at the loading berth in order to be taken on board.

Should, in the case of par. 1, No. 3, the loss of the goods

have occurred within the lay-days (Art. 579), the contract is not to be considered at an end, in case the charterer has without delay declared his readiness to deliver other goods (Art. 562) instead of those lost, and commenced such delivery within the lay-days. He is bound to complete the shipment of such other goods within the shortest possible time, to bear any additional cost arising in consequence of any such shipment, and to indemnify the shipowner for any damage resulting therefrom, in so far as the lay-days have been exceeded.

629. Either party can withdraw from the contract without being liable for damages—

(1) When before the commencement of the voyage—

The vessel is placed under embargo, or taken possession of for the service of the empire or a foreign power.

The trade with the port of destination is prohibited.

The loading port or the port of destination is blockaded.

The exportation of the goods, to be shipped according to the contract of affreightment, from the port of loading, or their importation into the port of destination is prohibited.

The vessel is by a Government order prevented from putting to sea, or the voyage, or the transmission of the goods to be shipped according to the contract of affreightment, is prohibited.

In all these cases, however, the Government order justifies the withdrawal from the contract, only when the impediment that has arisen is apparently not of short duration.

(2.) When, before the commencement of the voyage, a war has been declared in consequence of which the vessel, or the goods to be shipped according to the contract of affreightment, or both, can no longer be considered free, and would be liable to risk of capture.

The exercise of the right granted to the charterer in Art. 562 is not excluded by these prescriptions.

630. The contract of affreightment is terminated if, after the commencement of the voyage, the vessel is lost by an unfore-

seen incident (Art. 628, par. 1, No. 1). The charterer shall, however, pay such proportion of the freight for the goods saved or rescued, as the actually performed part of the voyage may bear to the entire voyage (distance freight).

No claim for distance freight shall exceed the value of the goods saved.

631. In the calculation of the distance freight it is to be taken into consideration not only the proportionate distance already performed to that still to be completed, but likewise the comparative proportion of expenditure in cost, time, danger and labour ordinarily connected with the part of the voyage already performed to that still to be completed.

632. The dissolution of the contract of affreightment alters nothing in the obligation of the master to take care of the cargo in the absence of the parties interested, even after the loss of the vessel (Arts. 535 to 537). The master is, therefore, justified and obliged, and in urgent cases even without previous inquiry, as circumstances may require, either to forward the cargo to the port of destination in another vessel for account of the parties concerned, or to have it stored or sold, and, in case of its being forwarded, or stored, to sell a portion thereof for the purpose of realising the funds necessary thereto and to its preservation, or in case of its being forwarded, to take a bottomry bond on the whole or a part of it.

The master is, however, not obliged to part with the cargo, or to deliver it to another master for the purpose of its being forwarded, unless the distance freight as well as all other claims of the shipowner (Art. 614), and the contributions due from the cargo for general average, salvage and assistance, and bottomry, have been paid or secured.

The shipowner is responsible for the fulfilment of the duties devolving on the master according to par. 1, to the extent of the value of the ship, so far as anything has been saved of it, and of the freight.

633. When the goods are lost by any accident after the commencement of the voyage, the contract of affreightment is at an end, without either party being liable to damages; the freight especially shall not be paid either totally or partially unless the contrary has been enacted by Art. 618.

634. When, subsequent to the commencement of the voyage, any of the incidents occur to which reference is made in Art. 629, either party has a right to withdraw from the contract without being liable to damages.

When, however, any of the incidents mentioned in Art. 629, par. 1, No. 1, occur, the parties have, before being able to withdraw, to wait for the removal of the impediment three or five months respectively, according as the vessel is in a European or in an extra-European port.

Such period shall be calculated from the day of receiving notice of the impediment, if the master is then at a port, or from that day on which, after having received such notice, he first reaches a port with the vessel.

The discharge of the vessel shall, in default of an agreement to the contrary, take place at the port at which it is staying at the time of the receipt of the notice of withdrawal.

The charterer is bound to pay distance freight for such portion of the voyage as is actually performed (Arts. 630, 631).

When, in consequence of such impediment, the vessel has returned to the port of departure or to any other port, in calculating the distance freight the nearest point to the port of destination, which the vessel had reached, shall be taken as the basis for ascertaining the distance actually performed.

The master is likewise bound to act, in any of the above-stated cases, before and after the dissolution of the contract of affreightment, in the interest of the cargo, in conformity with the Arts. 535-537 and 632.

635. When the vessel, after taking in its cargo, is detained in the port of loading before the commencement of the voyage, or in an intermediate port or in a port of refuge after its commencement, by any of the emergencies mentioned in Art. 629, then the expenses of such detention (even if the requirements of general average are not present) are divided among ship, freight and cargo, according to the principles of general average, whether the contract is thereby put an end to or afterwards completely fulfilled. The expenses of the detention include all the expenses enumerated in Art. 706, No. 4, par. 2, but those of putting into and leaving port only when the vessel has put into a port of refuge on account of the obstacle.

636. When, before the commencement of the voyage, only part of the cargo has met with an incident, which, if it had extended over the whole cargo, would, according to Arts. 628 and 629, have dissolved the contract, or have entitled the parties to withdraw from it, the charterer is only authorised either to ship other goods instead of those contracted for, provided the shipowner is not placed at a disadvantage by carrying them (Art. 562), or to withdraw from the contract on payment of one-half of the stipulated freight, and all other claims of the shipowner (Arts. 580 and 581). In exercising these rights, the charterer is not bound to observe the time otherwise prescribed, but he is bound to declare without delay which of these two alternatives he intends to adopt, and if he decides upon the shipment of other goods, to effect the shipment within the shortest possible time, as well as to pay any additional expenses of such shipment, and, should the lay-days have been exceeded, to make good the damage arising to the shipowner in consequence thereof.

When he avails himself of neither of these alternatives, he must pay the full freight for that part of the cargo to which the incident applies. At all events, he is bound to take out of the ship that part of the cargo which is no longer free in consequence of war, prohibition of importation and exportation, or of a Government order.

When the incident occurs after the commencement of the voyage, the charterer shall pay the full freight for such portion of the cargo as is concerned therein, even when the master has been compelled to discharge such portion in a different port from the port of destination, and when he has subsequently continued the voyage with or without delay.

The provisions of Arts. 617 and 618 are not affected.

637. The delay of the voyage caused by natural events or other incidents before or after its commencement has, except in the cases of Arts. 629-636, no influence upon the rights and duties of the contracting parties, unless the apparent object of the contract should thereby have been frustrated. The charterer is, however, authorised, during every delay caused by an incident, and which appears likely to be of considerable duration, to discharge the goods already laden in

the ship at his own risk and expense, and on giving security for their being re-shipped in good time. If he omits to re-ship, he is bound to pay the full freight. In any case he is answerable for all damages occasioned by any discharge originated by him.

In case the delay has arisen by a Government order, no freight shall be paid during such delay, if the ship was under time charter (Art. 622).

638. In case the vessel must be repaired during the voyage, the charterer may, at his option, either take delivery of the whole cargo at the place where the vessel is staying, on paying the full freight and the other claims of the shipowner (Art. 614) and on paying or securing the claims stated in Art. 615, or he may wait until the repairs have been completed. In the latter case no freight is due under a time charter during the progress of the repairs.

639. Should the contract of affreightment be dissolved pursuant to Arts. 628-634, the expenses of unloading from the vessel are borne by the shipowner, and all other expenses of the discharge by the charterer. When, however, the cargo only has been affected by the incident, the whole of the expenses of the discharge are borne by the charterer. The same rule applies if, in the case of Art. 636 part of the cargo is discharged. When, in such a case, it was necessary to put into a port for the purpose of discharging, the charterer shall also bear the port charges.

640. The Arts. 628-639 apply likewise, should the vessel have to proceed in ballast to the port of shipment for the purpose of taking in the cargo. In this case, however, the voyage is not considered to have begun before it has actually commenced from the loading port. When the contract is dissolved subsequently to the vessel having reached the loading port, even before the actual commencement of the voyage thence, the shipowner shall receive for the ballast voyage an indemnity to be fixed according to the principles of distance freight (Art. 631).

In other cases of compound voyages Arts. 628-639 shall apply, so far as the nature and contents of the contract stipulate nothing to the contrary.

641. Should the contract not extend to the whole of the vessel, but only to a proportionate part, or to a specially defined space of the same or to general cargo, the prescriptions of Arts. 628-640 apply, subject to the following modifications, *viz.* :—

(1) In the cases of Arts. 629 and 634 either party is justified in withdrawing from the contract immediately after the occurrence of the impediment and without regard to its duration.

(2) In the case of Art. 636 the charterer cannot exercise the right of withdrawing from the contract.

(3) In the case of Art. 637 the charterer has only the right of temporary discharge when all other charterers give their consent.

(4) In the case of Art. 638, the charterer can only take delivery of the goods, on payment of the full freight and all other claims, if during the repairs these goods had at any rate to be discharged.

The provisions of Arts. 587 and 589 are not affected.

642. After the completion of each separate shipment the master shall sign forthwith, and on return of the provisional receipt that may have been given on delivery of the goods, as many bills of lading as the shipper may demand.

All copies of the bills of lading must be identical, bear the same date, and state how many copies have been issued.

The master is entitled to demand from the shipper a copy of the bill of lading signed by the latter.

The signing of the bills of lading may be done instead of the master by some other person authorised by the shipowner.

With the consent of the shipper, the bills of lading may be signed also for goods delivered for conveyance, but not yet shipped.

643. The bill of lading contains—

(1) The name of the master.

(2) The name and nationality of the vessel.

(3) The name of the shipper.

(4) The name of the consignee.

(5) The port of lading.

(6) The port of discharge, or the place at which orders for the same are to be obtained (port of call).
(7) The description, quantity and marks of the goods shipped or accepted for shipment.
(8) The stipulations respecting the freight.
(9) The place and date on which it has been issued.
(10) The number of the copies issued.

644. When no agreement to the contrary has been made, the bill of lading can be issued at the demand of the shipper to the order of the consignee or simply to order. In the latter case, the word "order" means the order of the shipper.

The bill of lading may also name the master as consignee.

645. The master is bound to deliver the goods at the port of discharge to the legal holder of even only one copy of the bill of lading.

The party who is designated as consignee in the bill of lading, or to whom the bill of lading, in case it is issued to order, has been transferred by endorsement, is to be considered as legally entitled to receive the goods.

646. Should several legal holders of bills of lading apply for such goods, the master shall refuse delivery to all of them, deposit the goods in a public store or in some other safe manner, and inform thereof those holders of the bills of lading who did apply, stating the reasons for such proceedings.

The master may cause a public document to be executed stating his proceedings and his reasons for the same, and the outlay thereby occasioned is to be recovered from the goods in the same manner as the freight.

647. The act of handing over bills of lading issued to order, to the parties who would by the bill of lading be authorised to take delivery, as soon as the goods have been accepted for shipment by the master or another representative of the shipowner, is of the same effect respecting the acquisition of the rights to the goods as the delivery of the goods themselves.

648. In case several copies of a bill of lading to order have been issued, the holder of one of them cannot enforce the legal rights acquired by Art. 647 through its transfer, to the prejudice of a party who on production of another copy obtained delivery of the goods from the master in conformity

with Art. 645, before the holder of the copy first referred to has claimed their delivery.

649. Should several holders of bills of lading present themselves before the master has parted with the goods, the latter shall, in so far as their rights arising out of the bills of lading are irreconcilable one with the other, give the preference to that holder, whose bill of lading was first delivered by the common endorser of all of them in such a way as to authorise his taking possession of the goods.

When a copy has been sent to another place, the time of so dispatching it is to be considered the time of delivery.

650. The master is only obliged to deliver the goods on return of a copy of the bill of lading upon which the delivery of the said goods is duly certified.

651. The bill of lading is decisive for the legal position of the shipowner and the consignee of the goods towards each other; more especially the delivery of the goods to the consignee shall take place in accordance with the contents of the bill of lading.

Provisions of the contract of affreightment not embodied in the bill of lading have no effect as against the consignee, unless special reference is made to them in the bill of lading. When such reference has been made respecting the freight to the contract of affreightment (for instance, by the words " freight as per charter-party ") the stipulations as to the time for discharging, the days on demurrage and the demurrage are not considered to be therein included.

As regards the legal position of the shipowner and the charterer towards each other, the clauses of the contract of affreightment remain conclusive.

652. The shipowner is responsible to the consignee for the correctness of the description of the goods accepted, as contained in the bill of lading. This liability is, however, limited to the payment of such difference of value, as may appear between the actual state of the goods and their description in the bill of lading.

653. The liability of the shipowner as stipulated in Art. 652 likewise takes effect in case the goods have been delivered to the master in packing or in closed packages.

Should this be apparent from the bill of lading, the shipowner is not responsible to the consignee for the correctness of the description of the goods therein contained, provided that, notwithstanding the proper attention of a careful master, such incorrectness of the description in the bill of lading could not have been found out.

The liability of the shipowner is not removed by the fact that the conformity of the goods delivered with those received may not be disputed, or that the same may be proved by the shipowner.

654. Should any goods be delivered to the master packed or in closed packages, he may add on the bill of lading the words "contents unknown". When the bill of lading contains these or any other words to the same effect the shipowner is, in case of any difference between the contents delivered and those stated in the bill of lading, only so far answerable as it is ascertained that he really received other contents than those delivered.

655. Unless the goods described in the bill of lading by number, measure, or weight, have been really counted, measured, or weighed to the master on delivery, he may add on the bill of lading the words "number, measure, weight unknown". When the bill of lading contains these or words to the same effect the shipowner is not answerable for the correctness of the statements in the bill of lading respecting the number, measure, or weight of the goods delivered to him.

656. In case the freight has been stipulated by number, measure, or weight, and when such number, measure, or weight has been stated in the bill of lading, such statement shall be taken as the basis for the calculation of the freight, unless the bill of lading contains a provision to the contrary. The words "number, measure, weight unknown," or others to the same effect, are not considered to be such provisions to the contrary.

657. Should the bill of lading contain the clauses, "free from breakage," or "free from leakage," or "free from damage," or any other addition to the same effect, the shipowner is not answerable for breakage or leakage or damage, unless it is caused by the fault of the master or another person for whom the shipowner is responsible.

658. In case any goods are delivered to the master which are visibly damaged, in bad condition, or badly packed, he has to state these defects in the bill of lading; otherwise he is responsible to the consignee, although the bill of lading may contain one of the clauses mentioned in Art. 657.

659. After a bill of lading has been issued to order the master cannot comply with any instructions of the shipper concerning the returning or delivery of such goods, unless all copies of such bill of lading are returned to him.

The same rule applies to any demand made by any holder of a bill of lading for delivery of goods previous to the arrival of the master at the port of destination.

Should he act in contravention of these provisions, he remains liable to any legal holder of the bill of lading.

In case the bill of lading has not been issued to order the master shall return or deliver such goods even without the production of a copy of the bill of lading, if the shipper and the consignee named in such bill of lading have expressed their proper consent to the returning or the delivery of such goods. When, however, all the copies of the bill of lading are not returned, the master can previously demand security for any losses which might arise in consequence thereof.

660. The prescriptions of Art. 559 apply likewise when the contract of affreightment is dissolved, before the port of discharge has been reached, in consequence of any incident contemplated by Arts. 628-641.

661. The enactments of Arts. 511, 512, and 533 remain applicable as regards the liabilities of the master upon any contracts of affreightment concluded and any bills of lading issued by him.

662. In case any sub-contracts of affreightment have been concluded the shipowner, and not the party letting the ship under such sub-contracts, is answerable to the extent of ship and freight for the fulfilment of the sub-contract of affreightment, in so far as its execution belongs to the proper functions of the master and has been so undertaken by him, particularly in consequence of his receiving goods and issuing bills of lading (Art. 486).

Whether, and how far, the shipowner, or the party letting

the ship under such sub-contract, can be made answerable by the sub-charterer in all other respects, and whether in the latter case the party letting the ship under such sub-contract is, without limitation, answerable for its fulfilment, or whether he only assumes the limited liability of the owner to the extent of ship and freight, shall not be affected by the foregoing enactments.

663. The prescriptions of this part do not apply to the conveyance of goods by sea through the postal administration of the Empire and of the Federal States.

FIFTH PART.

Freight earned by the Conveyance of Passengers.

Art. 664. Should the passenger have been named in the passage contract, he is not entitled to transfer the right of passage to another party.

665. The passenger is bound to comply with all instructions of the master concerning the rules on board the vessel.

666. The passenger who, before or after the commencement of the voyage, does not go on board in due time, shall pay the full passage money, even if the master commences or continues the voyage without waiting for him.

667. When, previous to the commencement of the voyage, the passenger gives notice of withdrawal from the passage contract, or when he dies, or when he is compelled by illness or any other incident happening to his person to remain behind, one-half only of the passage money shall be paid.

When, after the commencement of the voyage, notice of withdrawal is given, or any of the incidents mentioned above occurs, the passage money shall be paid in full.

668. The passage contract becomes null and void when the vessel is lost in consequence of a casualty (Art. 628, par. 1, No. 1).

669. The passenger may withdraw from the passage contract, when, in consequence of a war breaking out, the vessel cannot any longer be considered as free, and would be ex-

posed to the risk of capture, or if the ship's voyage should be delayed by a Government order.

The shipowner has likewise the right of withdrawal when, in either of the above cases, he gives up the voyage, or when the vessel is intended principally for the transport of goods, and the adventure cannot be undertaken, because, without any fault on his part, such goods cannot be forwarded.

670. In all cases in which pursuant to Arts. 668 and 669 the passage contract is dissolved, neither party is liable to damages.

When, however, such dissolution takes place after the commencement of the voyage, the passenger shall pay passage money in proportion of the performed part of the voyage to the whole.

In calculating the amount due, the prescriptions of Art. 631 are decisive.

671. In case the vessel has to be repaired during the voyage, the passenger shall pay the passage money in full, although he may not wait for the completion of the repairs. Should he wait for the completion of the same, the shipowner has to provide him with free lodging until the voyage is resumed, and is likewise bound to continue to fulfil his obligations as to subsistence in conformity with the passage contract.

When, however, the shipowner offers to convey the passenger to the place of destination by another vessel equally good, and without prejudice to any further rights, and the passenger refuses to accept such offer, he has no further claim to be provided with lodging and board until the resumption of the voyage.

672. Beyond the passage money the passenger shall not pay separately for the conveyance of the luggage which, according to the contract, he is entitled to bring on board, unless an agreement to the contrary has been made.

673. The prescriptions of the Arts. 561, 593, 617 apply to any passenger's luggage brought on board.

When the luggage has been received by the master or a third party, especially appointed thereto, the provisions of the Arts. 606-610 apply in case of loss or damage.

The Arts. 563-565 and 619 apply likewise to all articles brought on board by the passenger.

674. The shipowner has a lien for the passage money on any articles brought on board by the passenger.

This lien exists, however, only so long as such articles are retained or deposited.

675. Should the death of any passenger occur, the master shall, according to the circumstances of the case, properly protect the interests of the heirs as to the luggage of the deceased which is on board.

676. When a vessel is chartered to a third party for the conveyance of passengers, no matter whether wholly or partially, or in such a manner that a certain number of passengers shall be carried, the enactments of the fourth part apply as regards the legal relations between the shipowner and such third party as far as the nature of the case admits.

677. When, in the following parts of this book, reference is made to the freight, it shall be considered to comprise also the passage moneys, unless the contrary is enacted.

678. The laws of the various countries concerning matters of emigration, even where they contain enactments of civil law, are not affected by the enactments of this part.

SIXTH PART.

Bottomry.

Art. 679. Bottomry, in the sense of this code, is a loan transaction concluded by the master as such, by virtue of the rights granted to him in this code, under promise of a premium, and under hypothecation of ship, freight and cargo, or of one or more of these objects, in such a manner that the creditor can enforce his claims only to the extent of the hypothecated (bottomried) objects after the arrival of the vessel at the place where the voyage for which the transaction has been concluded shall terminate (bottomry voyage).

680. Bottomry transactions may only be concluded by the master in the following cases, *viz.* :—

(1) While the vessel is away from the port of registry, for

the purpose of completing the voyage, in conformity with Arts. 528, 538-540 and 542.

(2) During the voyage in the sole interest of the parties concerned in the cargo, for the purpose of preserving and forwarding the same in conformity with Arts. 535, 542 and 632.

In the case of par 1, No. 2, the master may take bottomry on the cargo alone; in all other cases he may take bottomry for the ship or the freight alone, but for the cargo only together with ship and freight.

When a bottomry bond is given on the ship without naming the freight, the freight is not considered as included. When, however, a bottomry bond on ship and cargo is given, the freight is considered to be included in the same.

A bottomry bond on the freight is admissible as long as the latter is exposed to any sea risk.

A bottomry bond can likewise be given for the freight of that part of the voyage which has not yet been commenced.

681. The amount of the bottomry premium may without any restriction be agreed upon by the contracting parties.

In default of an agreement to the contrary the premium includes the interest likewise.

682. A bottomry bond shall be executed by the master concerning the bottomry transaction. Should this not have been done the creditor has the same rights as he would have if the master had entered into a simple credit transaction for the purpose of supplying any of his requirements.

683. The bottomry lender can demand that the bottomry bond shall contain—

(1) The name of the bottomry creditor.
(2) The amount of the principal of the bottomry debt.
(3) The amount of the bottomry premium, or the total amount of the sum payable to the creditor.
(4) The description of the objects hypothecated by the bond.
(5) The description of the vessel and the master.
(6) The bottomry voyage.
(7) The time at which the bottomry debt shall be paid.
(8) The place where the payment shall be made.

(9) The designation of the document as bottomry bond embodied in the document itself, or the declaration that the debt has been contracted as a bottomry debt, or any other declaration sufficiently showing the transaction to be of the nature of bottomry.

(10) The circumstances which have necessitated the entering into the bottomry transaction.

(11) The date and place where the document has been executed.

(12) The signature of the master.

The signature of the master shall be publicly certified if required.

684. Unless the contrary has been agreed upon, the bottomry bond shall, at the demand of the bottomry lender, be executed to the order of the creditor, or simply to order. In the latter case the word "order" signifies the order of the bottomry lender.

685. When the necessity of concluding the transaction has been established previous to the execution of the bottomry bond, by a document from the German consul, or in default of such consul from any court of law or any other competent authority, of the place of execution, or, in case neither of these exist, from the officers of the vessel, it shall be considered that the master has been duly authorised to conclude the transaction to the extent in question.

Evidence to the contrary, however, shall be admissible.

686. The bottomry lender can demand the execution of several copies of the bottomry bond.

Should several copies have been issued, the number of such copies has to be stated in each of them.

The plea that the master had not been authorised to enter into the transaction at all, or to the extent in question, is admissible also against the holder by endorsement.

687. Unless an agreement to the contrary has been made in the bottomry bond itself, the bottomry debt is payable at the port of destination of the bottomry voyage and on the eighth day after the arrival of the vessel in that port.

From the day when it falls due interest becomes payable upon the whole bottomry debt, including the premium.

This prescription does not apply when the premium has been stipulated by time; the time premium runs, however, until the payment of the principal of the bottomry debt has been effected.

688. The payment of the bottomry debt when due cannot be refused to the legal holder of even only one copy of the bottomry bond.

Such payment can only be demanded upon return of such copy, on which the customary receipt for the payment is to be attached.

689. In case several legal holders of any bottomry bond apply for payment, such payment shall be refused; the amount shall, in case it is required to obtain possession of the bottomried objects, be deposited publicly, or where this is impossible in any other safe manner; and those holders of any bottomry bond who have applied shall be informed of the course taken and of the reasons for the same.

Should a public deposit be impossible the depositor may cause a public document to be issued respecting his proceedings and his reasons for the same, and he may deduct the expenses thereby occasioned from the bottomry debt.

690. The bottomry creditor is not liable to contribute to general or particular average.

In case, however, the bottomried objects become, by reason of general or particular average, insufficient for the payment of the bottomry creditor, he shall bear the loss thereby caused.

691. Each of the bottomried objects is liable to the bottomry creditor for the whole bottomry debt.

As soon as the vessel has arrived at the port of destination of the bottomry voyage, the creditor can apply for an arrest of all bottomried objects; for the purpose of obtaining the arrest it is not necessary to state a reason for such arrest.

692. The master shall care for the safe keeping and preservation of the bottomried objects; he shall not without urgent reasons commit any act whereby the risk of the bottomry creditor is increased or altered from what he might anticipate when entering into the contract.

If the master acts contrary to these prescriptions he is

answerable to the bottomry creditor for the damage thereby arising (Art. 512).

693. When the master arbitrarily changes the bottomry voyage, or when he arbitrarily deviates from the proper course, or when after its termination he again exposes the bottomried object to sea risks without being compelled to do so in the interests of the creditor, the master is personally answerable to the creditor for the bottomry debt, so far as the latter does not receive his payment out of the bottomried objects, unless the non-payment has not been caused through the change of the voyage or through the deviation or through the new sea risk.

694. The master shall not deliver the bottomried cargo, either entirely or partially, before the creditor has been paid or properly secured, otherwise the master is personally answerable to the creditor for the bottomry debt so far as he could, at the time of their delivery, have been paid by the goods so given up.

It is assumed that the creditor could have been paid in full.

695. When in the cases of Arts. 692-694 the master has acted by directions from the shipowner, the prescriptions of Art. 512, pars. 2 and 3, shall apply.

696. If the amount of bottomry is not paid when due, the creditor may satisfy himself out of the bottomried objects. The satisfaction takes place in conformity with the prescriptions for the compulsory execution.

The action shall be brought, as far as the ship and freight are concerned, against the master or owner; the judgment against the master can also be enforced against the owner. As to the cargo, the action if taken before delivery of the cargo shall be against the master.

The creditor can make no use of his rights to the prejudice of a third party, who has *bonâ fide* become possessor of the bottomried cargo.

697. The consignee, to whom it is known on taking delivery of any bottomried goods, that they are liable for a bottomry debt, becomes personally answerable to the creditor for the debt to the extent of the value which the goods had at the

time of their delivery, so far as the creditor could have been paid out of the goods if the delivery had not taken place.

698. When the adventure is given up before the commencement of the bottomry voyage, the creditor may demand immediate payment of the bottomry debt at the place at which such bottomry has been taken; he must, however, be satisfied with a proportionate reduction of the premium; in fixing such reduction the proportion of the danger sustained to that undertaken shall be principally considered.

When the bottomry voyage does not terminate in the port of destination, but in another port, the bottomry debt must be paid in the latter port without deduction from the premium, after the expiration of the stipulated time for payment or, in default of any agreement, after the expiration of eight days (Art. 687). Such time of payment to be calculated from the definite abandonment of the voyage.

So far as the prescriptions of pars. 1 and 2 do not contain anything to the contrary the prescriptions of Arts. 688-697 apply likewise to these cases.

699. The application of the provisions of this part is not affected by the master being part owner or sole owner of the vessel or of the cargo, or of both of them, or by his having entered into the bottomry transaction upon special instructions from the parties concerned.

SEVENTH PART.

Average.

First Division—General Average and Particular Average.

Art. 700. All damage intentionally done to ship or cargo, or both, by the master or by his orders, for the purpose of saving both from a common danger, together with any further damage occasioned by such measures and likewise expenses incurred for the same purpose, are general average.

General average is borne by ship, freight and cargo in common.

701. All losses and expenses not belonging to general average but caused by an accident are particular average, as far as they do not come under Art. 621.

Particular average is borne by the owners of the ship and cargo respectively, each for himself alone.

702. The application of the rules for general average is not debarred by the fact that the danger has been occasioned by the fault of a third party, or even of one of the parties interested in the adventure.

The party interested who is in fault can, however, not only make no demand for compensation on account of any damage which he may thereby sustain, but is likewise answerable to each contributor for the loss which the latter may suffer through such damage being apportioned as general average.

Should the danger have arisen through the fault of one of the crew, the owner is likewise answerable for the consequences subject to the conditions of Arts. 485 and 486.

703. Average contribution takes place only when the ship as well as the cargo, each either wholly or in part, have been actually saved.

704. The obligation to contribute on the part of an article which has been saved is only then completely annulled when the article, owing to its having subsequently suffered particular average, is entirely destroyed.

705. The right to compensation for damage belonging to general average is only then set aside by a particular average subsequently affecting the damaged article, whether this be again damaged or totally destroyed, when the latter accident not only was entirely independent of the former, and only so far as the latter accident would have likewise carried with it the former damage if this had not already taken place.

If, however, before the occurrence of the latter accident steps should already have been taken to reinstate the damaged article, then the claim for reimbursement holds good as far as such steps are concerned.

706. The following cases especially are general average, always supposing that the requirements of Arts. 700, 702, and 703 are existing, so far as there is nothing to the contrary specially directed by the following prescriptions :—

(1) When goods, portions of the ship, or articles belonging thereto, are thrown overboard, masts are cut away, ropes or sails cut adrift, anchors, hawsers, or chain-cables slipped or cut away.

These damages, as well as any further damages caused to ship or cargo by such acts, belong to general average.

(2) When, in order to lighten the vessel, the cargo or part of it is discharged into lighters.

To general average belong as well the hire of the lighters as also any damage done to ship or cargo by discharging into the lighters or by re-shipping into the vessel, and any damage which may be done to the cargo while in the lighters.

If the lightening of the vessel must have taken place in the ordinary course of the voyage, there is no general average.

(3) When the ship is purposely run ashore, but only if done for the purpose of prevention of sinking or of capture.

The damages caused by the stranding, as well as by the getting off, as also all the expenses of getting off, belong to general average.

An average contribution is not made if the ship which has been stranded to avoid sinking is not got off, or after being got off is found incapable of repair (Art. 479).

If the ship strands, without the stranding being purposely done for preservation of ship and cargo, then the damages caused by such stranding are not, but the expenses occasioned by the getting off and the damages purposely inflicted on ship or cargo with this object are, general average.

(4) If the vessel puts into a port of refuge in order to avoid a common danger threatening the ship and cargo in case the voyage were prosecuted, more particularly if the putting into port is for the necessary repair of damage done to the ship during the voyage.

To general average in this case belong the expenses of

entering and leaving, the expenses attaching to the ship itself owing to the stay, the wages and provisions of the crew during the stay, the expense of lodging the crew on shore, so long as the crew cannot remain on board; further, if the cargo must be discharged as a consequence of the cause which led to the ship's putting into the port of refuge, the expense of discharging and re-shipping, as well as the expense of warehousing the cargo on shore up to the time when it can be put on board again.

The several charges for detention are only admitted for the time that the cause of putting into the port of refuge remains in force. If the cause is to be found in a necessary repair of the ship, the charges for detention are only admitted up to that time at which the repair might have been completed.

The expense of repair to the ship belongs to general average so far only as the damage which is to be repaired is itself general average.

(5) When the ship is defended against enemies or pirates.

All damage done to ship and cargo in such defence, the ammunition expended, and in case any of the crew is wounded or killed in such defence then the expenses of his cure or burial, as also the compensations to be paid according to Arts. 553 and 554 of this Code and to Arts. 49 and 51 of the Regulations for Seamen, are general average.

(6) When the vessel has been detained by enemies or pirates, and is redeemed by payment.

What is given for ransom together with the cost of maintenance and release of the hostages is general average.

(7) Losses and expenses incurred in obtaining the moneys necessary for payment of general average during the voyage, or expenses incurred in apportioning the amounts among the parties interested, belong to general average.

Among these, more particularly are to be reckoned the loss on goods sold during the voyage, the premium on

a bottomry loan taken up for the advance of the necessary funds, and, when this is not the case, the premium of insurance or the moneys expended, the expenses of determining the damage and drawing up the adjustment.

707. Not as general average, but as particular average, are to be considered :—

(1) Losses and expenses incurred in procuring moneys required in consequence of a particular average, even if in the course of the voyage.

(2) Expenses of reclaiming, even if the ship and cargo are both reclaimed together, and both successfully.

(3) Damage done to the ship, its appurtenances, or the cargo, by carrying a press of sail, even when the press of sail was carried to avoid stranding or capture.

708. In cases of general average, damages and losses occurring to the following articles are not allowed for in making up the statement :—

(1) Goods not laden under deck ; this regulation does not, however, apply to the coasting trade, when deck cargoes are allowed by the laws of the various countries to be carried (Art. 566).

(2) Goods for which there is no bill of lading, nor any entry, nor the manifest or cargo book.

(3) Valuables, objects of art, specie, and securities, respecting which proper notice has not been given to the master (Art. 607).

709. Damage done to the vessel or its appurtenances, belonging to general average, must be surveyed and estimated by experts at the port where it is made good, and before the repairs are commenced if it is done in the course of the voyage ; otherwise at the port where the voyage terminates. The estimate must include the probable cost of all requisite repairs. If the repairs are done in the course of the voyage, the estimate determines the amount to be allowed for the damage, except when the cost of completing such repairs is less than the estimated amount. If it was not possible to make an estimate, then the amount actually laid out on the necessary repairs is conclusive.

So far as the repairs are not completed during the voyage the estimate alone is conclusive in the settlement of the damage.

710. The full amount of the repairs, when settled according to the provisions of Art. 709, is the amount to be allowed in general average if, at the time of sustaining the damage, the vessel had not been afloat for a full year.

The same rule applies in allowing for separate parts of the ship, and particularly for the metal sheathing, and for separate parts of the appurtenances, when such parts have not been in use for a full year.

In the other cases, a deduction is made for the difference between old and new of one-third of the whole amount; in the case of chain-cables, however, only one-sixth, and on the anchors no deduction at all is allowed.

From the total amount are further to be deducted the proceeds or value of the old articles, if they shall be in existence, which have been or are to be replaced with new.

If such a deduction, and also the deduction for the difference between old and new, have to be made, the latter is first to be deducted, and afterwards the other deduction is to be made from the remainder.

711. The amount to be allowed for goods which have been sacrificed is determined by the market price of goods of the same kind and quality at the port of destination, at the time when the discharge of the ship was commenced.

If there is no market price, or in case of uncertainty as to such price or its applicability, more particularly with reference to the quality of the goods, the value must then be settled by competent persons.

From the value is to be deducted whatever saving in freight, duties and charges has resulted from the loss of the goods.

As goods sacrificed are to be considered, also, such as have been sold to satisfy general average (Art. 706, No. 7).

712. The amount to be allowed for goods which have suffered damage belonging to general average, is determined by the difference between the value of the goods in their damaged state at the commencement of the discharge of the vessel, which is to be settled by experts and the market price, as defined in

Art. 711, after deduction of dues and charges, so far as these may have been saved in consequence of the damage.

713. In fixing the amount which is to be allowed (Arts. 711, 712), a deduction is to be made on account of decrease of value and losses which may have occurred before, at, or after the casualty, not belonging to general average.

714. If the voyage does not terminate with regard to ship and cargo at the port of destination, but at another port, such latter port takes the place of the port of destination for the determining of the general average allowance; whereas, if the voyage is terminated by the loss of the ship, the place to which the cargo is brought in safety becomes the port of destination in like manner.

715. The allowance for freight not earned is to be determined by the amount which would have been due on the sacrificed goods, if they had been carried on by the ship to the port of destination; or, if the ship does not arrive at the port of destination, if they had reached the port where the voyage terminates.

716. The total amount of the loss which forms the general average is apportioned among ship, cargo and freight, in proportion to the values of ship and cargo and the amount of the freight.

717. The ship with its appurtenances contributes—

(1) On its value in the condition in which it was at the end of the voyage, when the discharge was commenced.

(2) On the amount allowable as general average on the ship and its appurtenances.

From the value in par. 1, No. 1, is to be deducted the existing value of those repairs and supplies which have been made since the occurrence of the casualty.

718. The cargo contributes—

(1) With the goods still existing at the end of the voyage when the discharge was commenced, or if the voyage is terminated by the loss of the ship (Art. 714), on the goods that have been brought into safety, so far as at the time of the casualty these goods, in both cases, were on board the vessel or a lighter (Art. 706, No. 2).

(2) With the goods sacrificed (Art. 711).

719. In determining the contribution, there must be taken into account—

(1) For goods which are undamaged, the market value, or the value as fixed by experts (Art. 711), of the goods at the end of the voyage, when and where the discharge was commenced, or, if the voyage is terminated by the loss of the ship (Art. 714), at the time and place of the salvage, after deducting freight, duties and other expenses.

(2) For goods which have been spoilt during the voyage, or have suffered damage not belonging to general average, on the value, as fixed by experts (Art. 712), of the goods in their damaged state at the time and place stated in No. 1, after deduction of freight, duties and other expenses.

(3) For goods which have been sacrificed, on the amount at which they are estimated under Art. 711 for general average.

(4) For goods which have suffered damage belonging to general average, the value, as estimated under No. 2 of the goods in their damaged state, adding thereto the difference of value which, according to Art. 712, is allowed in general average as compensation for the damage.

720. Goods recovered after being jettisoned are not to contribute to a general average occurring at the same time or subsequently, unless the owner of them makes a claim for contribution.

721. The freight contributes on two-thirds—

(1) Of the gross amount earned.

(2) Of the amount to be allowed as general average according to Art. 715.

Passage money contributes on the amount which would have been lost if the ship had perished (Art. 670), after deducting the expenses which would in that case have been saved.

722. If a contributory object is liable for a claim arising out of a subsequent casualty, it must only contribute on its value after deduction of this claim.

723. The following do not contribute to general average :—

(1) Ammunition and provisions of the ship.

(2) Wages and property of the crew.

(3) Baggage of passengers.

If objects of this kind have been sacrificed or have sustained damage which comes under general average, compensation is made for them as provided by Arts. 711 to 715; compensation is, however, not made for valuables, objects of art, specie or securities, unless they have been duly notified to the master (Art. 607). Objects for which compensation is made, contribute on the value, or difference of value at which they are replaced on the adjustment.

The objects enumerated in Art. 708 contribute as far as they have been saved.

Money advanced on bottomry is not liable to contribute.

724. If after the casualty, and before the commencement of the discharge at the end of the voyage, a contributory object is totally lost (Art. 704), or partially lost or diminished in value, more particularly if it is burdened with a claim in accordance with Art. 722, a corresponding increase takes place in the amounts to be contributed by the remaining objects.

If the loss or diminution of value occurs after the commencement of the discharge, the amount for which such object is liable to contribute, as far as the object is inadequate to the satisfaction of a claim, falls as a loss on the claimant.

725. Claimants on account of general average have the same rights as ships' creditors with respect to the amounts due from the ship and freight. With respect to goods which have to contribute, they have a lien on the separate goods for the amounts for which each is liable. Such lien, however, cannot after delivery of the goods, be enforced to the prejudice of third parties, who have *bonâ fide* come into possession of them.

726. An average loss in itself does not constitute a personal liability for payment of the average amount.

The receiver of goods from which a contribution has to be received, if such fact was known to him when he received the goods is, however, personally liable for such amount up to the value of the goods at the time of their delivery, in so far as

the amount could have been recovered out of the goods themselves if they had not been delivered.

727. The loss is to be determined and apportioned at the port of destination; or, if that is not reached, at the port where the voyage terminates.

728. The master is bound to cause the average statement to be made up without any delay. If he acts contrary to this obligation, he renders himself liable to every party interested.

Should the preparation of the average statement be unnecessarily delayed, every party interested may address a request for such preparation and urge its completion.

729. Under the jurisdiction of this code, the average statement is to be made up by the persons regularly appointed for the purpose, or in their absence by parties especially authorised by the Court (average staters).

Every party interested is bound to furnish the average stater with all documents necessary for making up the statement as far as they may be under his control, more particularly charter-parties, bills of lading and invoices.

730. Security shall be given to the parties interested in the cargo for the amounts due from the ship, before the latter can be allowed to leave the port in which, according to Art. 727, the apportionment and arrangement of the loss is to take place.

731. The master is not allowed to deliver goods, from which a contribution to average may be due, until the amount of such contribution shall have been paid, or security given for the same (Art. 615); in default of which, in addition to the liability of the goods, he becomes personally liable for the amounts.

If the master shall have acted in accordance with instructions from his owner, then the directions of Art. 512, pars 2 and 3 are to be acted upon.

The lien which parties entitled to compensation have on the contributory goods is exercised for them by the shipowner. The enforcing of the lien by the shipowner takes place in conformity with the prescriptions for the right of lien of the shipowner with respect to freight and outlay.

732. If the master shall have given a bottomry bond on

the cargo, or have disposed of a part of the same by sale or otherwise, in order to be able to continue the voyage, although for an expense which does not belong to general average, then the loss which the party interested in the cargo may sustain, because his claim cannot be satisfied, or can only partly be satisfied by ship and freight (Arts. 540, 541, 612), shall be borne by the whole of the parties interested in the cargo, according to the regulations laid down for the cases of general average.

In settling the loss, the compensation fixed in Art. 711 is decisive in all cases, and particularly in such as come under the second part of Art. 612. Goods which have been sold also contribute to general average, should such occur (Art. 718), with the value at which such compensation may be determined.

733. The amounts and compensations to be paid under the stipulations of Articles 635 and 732 are in all respects placed on the same footing as payments and compensations in cases of general average.

Second Division.—Damage by Collision.

Art. 734. When two ships come into collision, and either on one or both sides, in consequence of such collision, ship or cargo alone, or ship and cargo, should be damaged or entirely lost, then in case any one of the crew of either ship should have occasioned the accident by any fault of his own, the owner of that ship is answerable according to Arts. 485 and 486 for the repair of the damage which may have been done to the other ship or her cargo by the collision.

The owners of the cargo in the two ships are not liable to contribute to the compensation for the damage.

The personal liability of the crew for the consequences of their faults is not altered by these prescriptions.*

735. If no fault is attributable to any of the crew of either vessel, then no claim can be established for the damage done to either or both ships.*

If the collision is occasioned by faults on both sides, the liability for compensation as well as the extent of the compensation to be made, depends upon the circumstances;

* See footnote to Art. 739.

more particularly, whether the collision has been caused to a larger extent by members of the one crew or the other.

736. The prescriptions of Arts. 734 and 735 are applicable whether both vessels, or either of them, are under sail or drifting with the current, or are at anchor, or fastened to the shore.

737. When a ship which has been damaged by collision sinks before it can reach a port, it is taken for granted that the sinking of the ship was a consequence of the collision.*

738. When the ship is compulsorily in charge of a pilot and the crew have performed the duties required of them, the owner of the ship is then not responsible for the damage occasioned by a collision for which the pilot is to blame.*

739. The provisions of this part are also applicable when more than two vessels come into collision.

When in such a case the collision shall have been occasioned by the fault of any of the crew of one of the vessels, then the owner of such vessel is also answerable for damage which may be occasioned in consequence of the second vessel, through the collision, being driven into collision with a third.*

EIGHTH PART.

Salvage and Assistance in Cases of Distress.

Art. 740. When in case of distress a ship or its cargo, being no longer under the control of the crew, or having been abandoned by the same, is taken charge of either wholly or in part by third parties and brought into safety, then such parties have a claim for salvage.

When in any other case than the above, a ship or its cargo is rescued from a state of distress by the help of third parties, then such parties have only a claim for assistance.

The crew of the vessel which is lost or in danger can have no claim for salvage or assistance.

* Art. 7 of *Introductory Law.* The prescriptions of Arts. 485 and 486, par. 1, No. 3, of the Mercantile Law concerning the liability of owners for the fault of one of the crew, as well as the prescriptions of Arts. 734-739 of the Mercantile Law concerning the liability in case of collision of ships, apply also when the employment of the vessel for navigation was not for the purpose of making a profit.

741. When during the danger an agreement is made as to the amount of the salvage or payment for assistance, such agreement may nevertheless be disputed on the plea that the amount agreed upon was excessive, and the reduction of the same to an amount more in accordance with the circumstances of the case may be demanded.

742. In the absence of any agreement, the amount of the salvage or assistance shall be fixed in money, all the circumstances of the case being taken into reasonable consideration.

743. The amount awarded for the salvage or assistance also includes compensation for any outlay which may have been made for the purposes of the salvage or assistance.

It does not include, however, the costs and fees of the authorities, the duties and charges to which the salved articles may be liable, or the expenses of storing, preserving, valuing, and disposing of the same.

744. The following circumstances are more particularly to be taken into consideration in settling the amount to be awarded for salvage or assistance:—

The zeal shown.

The time expended.

The services rendered.

The outlay incurred.

The number of persons who assisted.

The danger to which they and their vessels were exposed, as also

The danger which threatened the salved or rescued articles, and

The value of the same remaining after deduction of the expenses (Art. 743, par. 2).

745. The award for salvage or assistance shall not be fixed at a proportion of the value of the salved or rescued articles, unless all parties shall mutually agree thereto.

746. The amount of the salvage shall not exceed one-third of the value of the articles salved (Art. 744).

Only in exceptional cases may the amount be increased up to the half of the value, as when the salvage was accompanied with unusual exertions and risks, and when at the same time such value is only small.

747. The amount awarded for assistance shall always be less than the amount of salvage would have been in the same circumstances. In settlement of the amount to be awarded for assistance, the value of the articles rescued is only of secondary importance.

748. When several persons take part in the salvage or rendering of assistance, the amount awarded shall be divided among them in proportion to the services, that each may have rendered either personally or with his property, and in case of dispute, according to the number who have to participate.

All those who devote themselves to the saving of human life in a casualty are entitled to participate equally.

749. When a ship or its cargo is either wholly or in part salved or preserved by another ship, then the amount awarded for salvage or assistance is divided between the owner, the master, and the rest of the crew of the other ship, unless it shall have been otherwise specially agreed between them, in such proportion, that the owner shall take one-half, the master one-quarter, and the rest of the crew the other one-quarter. Among the latter the amount shall be divided in proportion to the pay to which each is entitled, or to which each would be entitled according to rank.

750. No person has any claim for salvage or assistance—

(1) Who forces the acceptance of his services, or more particularly goes on board the ship without permission of the master, when the latter was present.

(2) Who does not immediately give notice to the master, the proprietor, or the proper authority respecting the objects salved.

751. With respect to the expenses for salvage and assistance, more particularly also with respect to the amount awarded for salvage and assistance, the creditor has a lien on the salved or preserved articles, and, with respect to the salved articles, may detain them until security for the amount has been given.

In enforcing the lien the stipulations of Art. 696 shall be applied

752 The master may not deliver the goods, either wholly or in part, until the creditor has been paid or has received

security, otherwise he makes himself personally liable to the creditor, so far as the latter's claim could have been satisfied out of the delivered goods at the time of their delivery.

If the master has acted in accordance with instructions from his owner, then the directions of Art. 512, pars. 2 and 3, come into operation.

753. Salvage and rendering of assistance do not of themselves impose a personal responsibility for payment of salvage and assistance expenses.

But the receiver of goods, when it is known to him at the time he received them, that the same were liable for salvage or assistance expenses, becomes personally liable for such expenses, so far as they could have been satisfied out of the goods themselves, had they not been delivered.

If other articles have been salved or preserved, together with the goods which have been so delivered, then the personal liability of the receiver only extends to the amount which falls upon the goods delivered, when the expenses are divided among the whole of the articles.

NINTH PART.

Ship's Creditors.

Art. 754. The rights of a ship's creditor are acquired by virtue of the following claims, *viz.* :—

(1) The expenses, not connected with the compulsory execution, of watching and keeping the vessel and its appurtenances, from the time of its being brought into the last port, in case it is sold by order of a court of law.

(2) All public, ship, navigation and port dues, more particularly tonnage, light, quarantine and port dues.

(3) The claims of the crew arising out of contracts respecting their services and wages.

(4) Pilotage moneys, and expenses for salvage, assistance, redemption and reclamation.

(5) The contributions of the vessel to general average.

(6) Claims of the bottomry creditors, to whom the vessel has been bottomried, as well as the claims arising out

of other credit transactions which the master as such has concluded in urgent cases, while the vessel was away from the port of registry (Arts. 528 and 541), even if he is part owner or sole owner of the vessel. Claims for supplies furnished or services rendered enjoy the same privilege as the aforesaid claims on credit transactions, if such supplies have been furnished or services rendered in cases of necessity, while the vessel was away from the port of registry, and for the preservation of the vessel or for the performance of the voyage, to the master as such and not on his personal credit, so far as the supplies furnished or services rendered were required to make good the necessity.

(7) Claims for non-delivery of or damage to goods forming part of cargo and to baggage coming under Art. 673, par. 2.

(8) Claims, not coming under one of the above heads, arising out of law transactions which the master as such has concluded by virtue of his legitimate authority and not of a special power of attorney (Art. 486, par. 1, No. 1; also claims, not coming under one of the above numbers, arising out of non-fulfilment or incomplete or imperfect fulfilment of a contract made by the owner, so far as the carrying out of the latter belonged to the duties of the master (Art. 486, par. 1, No. 2).

(9) Claims arising out of the fault of a person belonging to the crew (Arts. 485 and 486, par. 1, No. 3), although he may at the same time be part owner or the sole owner of the vessel.

(10) The claims which the Seaman's Association (Berufsgenossenschaft) is entitled to make against the owner in conformity with the prescriptions of the insurance against accidents, and with the insurance institute according to the prescriptions of the insurance for invalids.

755. Ship's creditors, to whom the vessel has not already been bottomried, have a legal lien upon the vessel and its appurtenances.

The lien may be enforced against all third parties who may have possession of the vessel.

756. The legal lien of each of these ship's creditors extends also to the gross freight of that voyage out of which his claim has arisen.

757. As a voyage within the meaning of this part shall be considered that voyage for which the vessel is fitted out anew, or which is commenced either in consequence of a new contract of affreightment or after complete discharge of the cargo.

758. The ship's creditors specified in Art. 754, No. 3, have, in respect of their claims arising out of a later voyage, a legal lien also upon the freight of former voyages, so far as they are performed under the same agreement as to service and wages.

759. The provisions concerning the legal lien of the other ship's creditors apply equally to the lien to which bottomry creditors are entitled according to Art. 679.

The extent of the lien of the bottomry creditor is, however, determined by the contents of the bottomry contract (Art. 680).

760. The lien of a ship's creditor exists in like manner for principal, interest, bottomry premium and costs.

761. The satisfaction of the ship's creditor out of the ship and the freight takes place in conformity with the prescriptions for compulsory execution. The action may be entered against the shipowner as well as the master, against the latter even when the vessel is in the port of registry (Art. 480).

A judgment given against the master is valid also against the shipowner.

762. The rights of a ship's creditor are not impaired by the fact that the shipowner became personally liable for the claim, either at the time of its origin or subsequently.

This provision applies more particularly to the claims of the crew founded upon agreements of service and wages.

763. When the vessel belongs to a joint-ownership the ship and freight are liable to ship's creditors in the same manner as if it belonged to a single owner.

764. The lien of the ship's creditor upon the vessel becomes void—

(1) Besides the case of a compulsory sale of the vessel in a home port; also

(2) By the sale of the vessel effected by the master by virtue of his legal authority in a case of urgent necessity (Art. 530); the purchase money takes the place of the vessel as regards the ship's creditors, so long as it is not paid by the purchaser or is still in the hands of the master.

These prescriptions apply also to other liens upon the ship.

765. If the ship is sold in cases other than those mentioned in Art. 764, the purchaser is entitled to demand the exclusion of the unknown ship's creditors after having publicly summoned them.

766. With respect to the ship, the outlay for watching and keeping the vessel from the time of its arrival in the last port (Art. 754, No. 1) has precedence over all other claims of ship's creditors.

767. As regards the claims mentioned in Art. 754, Nos. 2-9 those relating to the last voyage (Art. 757), in which are included those arising after the termination of the last voyage, have precedence over the claims connected with former voyages.

As regards claims not relating to the last voyage, those relating to a later voyage have precedence over those relating to a former one.

As regards the ship's creditors mentioned in Art. 754, No. 3, their claims relating to a former voyage have the same precedence as those relating to a later voyage, provided the different voyages are performed under the same contract of service or wages.

When the bottomry voyage includes several voyages in the sense of Art. 757, the bottomry creditor shall rank after those ship's creditors whose claims refer to the voyages commenced after the termination of the first of such voyages.

768. Claims relating to the same voyage, as also those which are to be considered as relating to the same voyage (Art. 767), are to be paid in the following order, *viz* :—

(1) All public, ship, navigation and port dues (Art. 754, No. 2).

(2) Claims of the crew arising out of agreements concerning their services and wages (Art. 754, No. 3).

(3) Pilotage moneys and expenses for salvage, assistance,

redemption and reclamation (Art. 754, No. 4), contributions of the vessel to general average (Art. 754, No. 5), claims arising out of bottomry and other credit transactions entered into by the master in cases of necessity, as well as such claims as are to be treated on the same footing therewith (Art. 754, No. 6).

(4) Claims for non-delivery of or damage to goods and baggage (Art. 754, No. 7).

(5) Claims mentioned in Art. 754, Nos. 8 and 9.

769. Of the claims referred to in Nos. 1, 2, 4 and 5 of Art. 768, those comprised under one and the same number shall be considered to have equal rights.

Of those claims, however, mentioned in Art. 768, No. 3, a more recent claim shall have precedence over one of an earlier date; those arising simultaneously have equal rights.

When the master has concluded several transactions in consequence of the same case of necessity (Art. 754, No. 6), the claims resulting therefrom shall be considered to have arisen simultaneously.

Claims arising out of credit transactions, more particularly out of bottomry contracts entered into by the master for the purpose of paying earlier liabilities under Art. 768, No. 3, as well as claims arising out of contracts concluded by him in order to extend the term of payment of, or for the purpose of acknowledging or renewing such former liabilities, shall only have the same priority as the earlier claim, although the credit transaction or contract may have been necessary for the continuation of the voyage.

770. The claims indicated in Art. 754, No. 10, follow after all other claims of ship's creditors, irrespective of the time of their origin.

771. The ship's creditors' lien upon the freight (Art. 756) is only valid so long as the freight is still unpaid, or the moneys paid in satisfaction of the freight are still in the hands of the master.

To such lien apply likewise the prescriptions of Arts. 766-770 concerning priority.

Should the freight have been transferred, the lien of the

ship's creditors may be enforced likewise against the new creditor so long as the freight is still unpaid or the money is in the hands of the master.

For so much of the freight as the shipowner receives he is personally liable to the ship's creditors, who have been thereby entirely or partially deprived of their lien; to each for such amount as he would have received as his proportion, if the said money had been distributed according to the legal order of priority.

The same personal liability attaches to the shipowner, with respect to goods shipped on his own account, to the extent of the current freight at the loading port at the time of shipment.

772. When the shipowner uses the freight to satisfy one or more creditors having any lien thereupon, he is answerable to creditors who would have had a prior claim only so far as it is proved that he has knowingly wronged them.

773. In so far as the shipowner receives the purchase-money in the cases mentioned in Arts. 764 and 765, he is personally responsible to the ship's creditors, whose liens are lapsed in consequence of the compulsory public sale, the sale or the public summoning, to the same extent as he is to the creditors of a voyage in case of encashment of the freight (Arts. 771 and 772).

774. When the shipowner, after having received notice of the claim of a ship's creditor for which his liability extends only to the ship and freight, sends the vessel to sea on a new voyage (Art. 757), should such a course not be indispensable in the interest of the ship's creditor, he becomes likewise personally responsible for the claim to the extent of that amount, which the creditor would have realised, if the value of the vessel at the commencement of the voyage had been distributed amongst the ship's creditors according to the legal order of priority.

It is presumed that the creditor would have received payment in full by such distribution.

The personal liability of the owner arising out of the encashment of freight which is subject to the lien of the creditor (Art. 771) is not affected by these prescriptions.

775. In cases of general average, the compensation for sacrifice or damage takes, as against the ship's creditor, the place of that which the compensation is to make good.

The same rule applies to the indemnity which, in case of loss or damage to the vessel or of non-payment of freight when goods have been lost or damaged, is payable to the shipowner by the party who has caused the damage by his illegal conduct.

When the compensation or indemnity has been received by the shipowner, he is personally responsible to the ship's creditors, to the extent of the amount received, in the same manner as to the creditors of a voyage in case of encashment of the freight (Arts. 771, 772).

776. Where there are ship's creditors enforcing their lien and other creditors on mortgage or otherwise, preference is due to the ship's creditors.

777. Of liens upon the goods for freight, bottomry moneys, contributions to general average, claims for salvage and assistance (Arts., 623, 679, 725, 751), the lien for freight ranks after all others; amongst these claims the more recent have priority over the earlier claim, those of simultaneous origin enjoy equal rights. Claims originating in transactions which the master has concluded in consequence of the same case of necessity are considered to be of simultaneous origin.

The provisions of Art. 775 apply in the cases of general average, and of loss or damage by illegal actions; the provisions of Art. 764 apply in the case of a sale effected by the master for the purpose of avoiding or lessening a loss according to Art. 535, par. 3; and the provisions of Art. 773 apply, when the party for whose account the sale has taken place receives the purchase money.

TENTH PART.

Insurance against the Dangers of Maritime Navigation.

First Division.—General Prescriptions.

Art. 778. Every interest computable in money, which any person has at stake in the preservation of ship or cargo from

the dangers of maritime navigation, may be the subject of marine insurance.

779. The following more particularly may be insured :—

The vessel.
The freight.
The passage moneys.
The cargo.
The bottomry moneys.
The average moneys.
Other claims for the payment of which vessel, freight, passage moneys or cargo, are liable.
The benefit expected from the arrival of the cargo at the port of destination (imaginary profits).
The commission to be earned.
The risk taken by the underwriter (re-insurance).

One of these insurances does not include the other.

780. Claims of the master and the crew for wages are not insurable.

781. The party insuring may either insure his own interest (insurance for own account) or the interest of a third party (insurance for account of another, as agent), and in the latter case with or without disclosing the name of the assured.

The contract may also leave it undecided, whether the insurance has been effected for own account or as agent (for account of "whom it may concern"). If in the case of an insurance on account of "whom it may concern," it should turn out that the same has been effected on account of a third party, the provisions concerning insurance as agent come into application.

The insurance is considered to have been effected for the account of the party taking the insurance, when it does not appear upon the face of the contract that it has been effected as agent or for account of "whom it may concern".

782. An insurance as agent is only binding upon the underwriter when either the party taking the insurance has been authorised by the assured to effect it, or when the absence of such authorisation has been notified to the underwriter by the party taking the insurance at the time of completing the contract.

When this notification has been omitted, the want of authorisation cannot be made good by the subsequent consent to the insurance by the assured.

When the notification has been given, the validity of the insurance as against the underwriter is not dependent upon the subsequent consent of the assured.

The underwriter on whom, according to these prescriptions, the insurance contract is not binding, is entitled, even when he proves the invalidity of the contract, to the full premium.

783. When the insurance is effected by an empowered substitute, by a manager without authorisation, or by some other representative of the assured in the name of the latter, such representative is neither an insurer within the meaning of this Act, nor is the assurance itself an insurance done by an agent.

In doubtful cases it shall be considered, that even when an insurance refers to the interest of a named third party it is an assurance done as agent.

784. The underwriter is obliged to deliver to the party effecting the insurance at his request a written document (policy) relating to the insurance contract, and bearing his signature.

785. The validity of the insurance contract is not affected by the question whether at the time of its conclusion there is no longer any possibility of a claim occurring for damage, or whether a claimable damage has already occurred.

The contract is, however, invalid as an insurance contract if both contracting parties were aware of the position of affairs.

If the underwriter alone was aware that the possibility of a claimable damage no longer existed, or if the insured party alone was aware that a claimable damage had already occurred, the contract is invalid as regards the other party to whom the position of affairs was unknown. In the second case the underwriter can claim the full premium, even when he relies upon the invalidity of the contract.

When the contract is concluded for the party taking the insurance by a representative, the provisions of Art. 806, par. 2, apply; in case of an insurance as agent, the provisions of

Art. 807; and in case of an insurance of several objects or of a collection of objects, the provisions of Art. 810.

786. The full value of the insured object is the insurable value.

The sum insured shall not exceed the insurable value.

The insurance has no legal validity so far as it exceeds the insurable value (over-insurance).

787. When in the case of a simultaneous conclusion of various insurance contracts the total amount of the sums assured exceeds the insurable value, all underwriters together are only answerable to the extent of the insurable value, each of them being liable for such a percentage of the insurable value as the sum he has insured represents in proportion to the total of the amounts insured. When doubts arise in such cases the contracts shall be considered as simultaneously concluded.

Insurance contracts for which a common policy has been given, as also insurance contracts concluded on the same day, are considered as simultaneously concluded.

788. When an interest which has already been insured to its full value is again insured, the later insurance is legally invalid so far as the interest has already been insured for the same time and against the same danger (double insurance).

If the full value is not covered by the earlier insurance, the later insurance is only valid for that part of the value not previously insured, so far as the insurance has been taken for the same time and against the same danger.

789. The later insurance is, however, legally valid notwithstanding the previous insurance—

(1) When at the conclusion of the later insurance it is agreed with the underwriter that rights arising out of the previous insurance shall be ceded to him.

(2) When the later insurance is concluded with the condition that the underwriter shall only be answerable so far as the assured may be unable to enforce payment against the former underwriter on account of insolvency, or so far as the former insurance is legally invalid.

(3) When the former underwriter is by formal notice

released from liability so far as is necessary to avoid a double insurance, the later underwriter being informed thereof at the conclusion of the later insurance. In this case the former underwriter is entitled to the full premium although he is freed from his obligation.

790. In case of double insurance the later insurance, not the previous one, is legally valid, when the previous insurance has been taken as agent without authorisation, the later insurance, on the other hand, being effected by the assured himself, provided the assured at the time of effecting the later insurance was not informed of the previous one, or gives notice to the underwriter at the time of its conclusion that he repudiates the previous insurance.

The provisions of Arts. 895 and 896 apply in such cases as far as regards the rights of the former underwriter to the premium.

791. When several insurances have been made simultaneously or successively, a subsequent renunciation of rights attaching against one underwriter cannot influence the rights and obligations of the remaining underwriters.

792. When the insured sum falls short of the insurable value, the underwriter, in case of a partial damage, shall make good the amount of such damage only in the same proportion as the sum insured bears to the insurable value.

793. When by arrangement of the parties the insurable value is fixed at a stated sum ("valuation," "valued policy"), such stated sum is binding upon the parties as the insurable value.

The underwriter is, however, entitled to demand a reduction of the valuation, if the same is considerably overstated; if an imaginary profit has been insured at a valuation, the insurer can demand a reduction of the estimate if the same exceeds the profit which, at the time of the conclusion of the contract, could, according to commercial calculation, possibly have been expected.

A policy containing the clause "provisionally valued" shall, so long as a definite valuation has not been inserted, be considered as an unvalued (open) policy.

When freight has been insured the valuation shall only

govern the amount claimable against the underwriter when this has been expressly stipulated.

794. When several objects, or a collection of objects, are included in a policy under the same assured sum, and for some of them special valuations have been agreed to, the objects specially valued are considered as separately insured.

795. Unless the parties agree upon another basis of value, the insurable value of ship shall be considered to be its value at the time when the underwriter's risk begins.

This rule applies also when an estimate of the insurable value of the vessel has been inserted.

796. The cost of outfit, the wages, and the cost of insurance may be insured together with the ship or separately, so far as they may not have been previously covered by insurance of the gross freight. They are considered to be insured together with the ship only when this has been mutually agreed upon.

797. The freight may be insured to the extent of its gross amount, in so far as it may not have been previously covered by insurance of the cost of outfit, of wages, and cost of insurance.

The amount of freight stipulated by the contracts of affreightment shall be considered as the insurable value of the freight, and when a fixed amount of freight has not been agreed upon, or so far as goods have been shipped on account of the shipowner, the amount of the current freight (Art. 619).

798. When an insurance upon freight does not mention whether the whole or only a part thereof is to be insured, the whole freight shall be considered as insured.

When it is not stated whether the gross or net freight is insured, the gross freight shall be considered as insured.

When the freight of the outward voyage and the freight of the homeward voyage are covered in one insurance, and it has not been stated, what proportion of the insured sum shall apply to the freight of the outward voyage, and what to that of the homeward voyage, one moiety of such sum shall be accounted as the freight of the outward voyage, and one moiety as the freight of the homeward voyage.

799. Unless the parties agree upon another basis of value, the value which the goods may have at the place and time of

shipment, including all expenses incurred till they have been received on board, together with the cost of insurance, shall be considered as the insurable value.

The freight and the charges during the voyage and at the place of destination are only included when a special agreement has been made to that effect.

These prescriptions are also applicable when the insurable value of the goods has been inserted.

800. When the cost of outfit or the wages are insured, whether separately or by insurance of the gross freight, or when in the case of an insurance on goods, the freight or the charges during the voyage and at the place of destination are insured, the underwriter is not liable to pay for that portion of the charges, the wages, or the freight which in consequence of a casualty have been saved.

801. In the case of an insurance upon goods, imaginary profit or commission is only considered as included in the assurance, if such has been stipulated by the contract, even though the insurable value of the goods may have been declared.

If when imaginary profit has been included in the insurance the insurable value has been declared, but without stating what proportion of the said value relates to the imaginary profit, it shall be considered that 10 per cent. of the said value is intended to cover the imaginary profit. If when imaginary profit has been included in the assurance, the insurable value has not been declared, then 10 per cent. of the insurable value of the goods (Art. 799) is considered to have been insured as imaginary profit.

The provisions of the second paragraph are applicable also to cases where commission has been included in the insurance, with the modification, however, that 2 per cent. is to be substituted for the 10 per cent.

802. If imaginary profit or commission has been separately insured, but the insurable value not declared, it shall in doubtful cases be considered that the insured sum is to be taken also as the insurable value.

803. Moneys advanced upon bottomry may be insured on account of the bottomry creditor together with the bottomry premium.

If an insurance on bottomry moneys does not mention what interests have been bottomried, it shall be considered that the bottomry advances are insured upon ship, freight and cargo. If the whole of these interests have not actually been bottomried, the underwriter alone is entitled to claim the benefit of the foregoing enactment.

804. When the underwriter has fulfilled his engagement, he acquires, so far as he has paid a loss which the assured was entitled to claim against a third party, the rights of the assured against such third party, without prejudice, however, to the provisions of Art. 775, par. 2, and of Art. 777, par. 2.

The assured shall, at the request and at the expense of the underwriter, provide him with a certified document acknowledging his assumption of all rights against the third party.

The assured party is responsible for any action by which he prejudices those rights.

805. In case of the insurance of a claim the payment of which is secured upon some interest exposed to the perils of the sea, the assured in case of damage shall cede to the underwriter, when the latter has fulfilled his engagement, his rights against the debtor to the same extent to which the underwriter has made good the loss.

The assured is not bound to enforce his rights against the debtor before claiming against the underwriter.

Second Division.—Statements made at the Time of Conclusion of the Contract.

Art. 806. The party taking the insurance, whether acting on his own account or as agent, shall inform the underwriter at the time of conclusion of the contract of all circumstances within his knowledge, which, as being of importance for the due appreciation of the risk which the underwriter is taking upon himself, are of a nature to influence him in his decision either to enter into the contract at all or on what conditions.

When the contract is concluded by a representative on behalf of the party taking the insurance, the circumstances known to the representative must also be stated.

807. In the case of an insurance as agent, the underwriter

must at the conclusion of the contract be likewise informed of all circumstances known to the assured himself or to any intermediate agent.

This does not, however, apply to facts within the knowledge of the assured or of an intermediate agent when such circumstances has come to their knowledge so late that, without resorting to extraordinary measures, they would be unable to notify it to the party taking the insurance before the conclusion of the contract.

Nor does it apply to facts within the knowledge of the assured when the assurance has been effected without his authority or knowledge.

808. When the obligation mentioned in Arts. 806 and 807 is not fulfilled, the contract is not binding upon the underwriter.

This rule, however, does not apply when the fact not notified was known to the underwriter, or when it might be taken for granted that it was known to him.

809. When the party taking the insurance has, at the time of concluding the contract, made an incorrect statement concerning an important fact (Art. 806), the contract is not binding upon the underwriter unless the incorrectness of the statement was known to him.

This provision applies irrespective of the question whether the incorrectness of the statement was wilful or accidental, and whether with or without fraudulent intention.

810. In the case of insurance of several objects or of a collection of objects, if the provisions of Arts. 806-809 have been infringed with respect to a circumstance relating only to a portion of the insured objects, then the contract continues in force against the underwriter as regards the remaining portion. The contract is, however, invalid against the underwriter with respect to this portion also, if it is to be presumed that he would not have insured such portion alone on the same conditions.

811. The underwriter is entitled to the full premium in cases contemplated by Arts. 806-810, even when he relies upon the total or partial invalidity of the contract.

THIRD DIVISION.—OBLIGATIONS OF THE ASSURED ARISING OUT OF THE CONTRACT OF INSURANCE.

Art. 812. In default of a special agreement to the contrary, the premium is payable immediately after the conclusion of the contract, and, when a policy is required, against delivery of such policy.

The party taking the insurance is liable for the payment of the premium.

In case of an insurance effected as agent, if the party taking the insurance has become insolvent and has not received the premium from the assured, the underwriter may claim payment of the premium likewise from the assured.

813. When before the commencement of the underwriter's risk another voyage has been substituted for the voyage insured, the underwriter is exonerated from all liability in case of insurance upon ship and freight; with respect to other insurances the risk of the substituted voyage only attaches to the underwriter, when the alteration in the voyage has neither been made by the assured nor by his orders nor with his consent.

When the insured voyage is altered subsequently to the commencement of the underwriter's risk, the latter is not answerable for accidents occurring after the alteration in the voyage. He is, however, answerable for such accidents when the alteration has been made neither by the insured nor by his orders nor with his consent; or when the alteration has been occasioned by a casualty, unless such casualty results from perils, which are not at the risk of the underwriter.

The voyage is altered so soon as the determination to direct it to another port of destination has been carried into effect, although the routes to the two ports of destination may not have as yet diverged. This rule applies as well to cases referred to in par. 1 as to those referred to in par. 2.

814. If the commencement or the termination of the voyage be unduly delayed by the assured or by his orders or with his consent; or if the ordinary course of the insured voyage be deviated from, or a port be entered the putting into which cannot be considered to be included in the insured

voyage; or if the assured otherwise cause an augmentation of or alteration in the risk, more especially by the non-fulfilment of a promise expressly made in this respect; then the underwriter is not answerable for accidents which may afterwards occur.

This result, however, does not take place—

(1) If it is to be presumed that the augmentation of or alteration in the risk could have had no influence upon the subsequent casualty.

(2) If the augmentation of or alteration in the risk, subsequently to the risk attaching upon the underwriter, has been occasioned by a casualty, provided the casualty does not result from a danger for which the underwriter is not answerable.

(3) If the master has been compelled by the dictates of humanity to deviate from the course of the voyage.

815. If at the conclusion of the contract the name of the master has been given, this fact alone does not imply a promise that such master shall retain the command of the vessel.

816. In case of insurance upon goods the underwriter is not responsible for any casualty, so far as such goods have not been forwarded by the vessel designated for their conveyance. He is, however, responsible to the extent of the contract, if, subsequently to the commencement of his risk, without orders from or consent of the assured, the goods are forwarded in some other manner than by the vessel designated for their conveyance, or when this has been done in consequence of a casualty, unless such casualty results from a risk for which the underwriter was not responsible.

817. When an insurance is effected on goods without stating the name of the vessel or vessels (insurances on "ship or ships"), the assured, immediately he has received intelligence of the name of the vessel on board of which the insured goods have been shipped, shall communicate this information to the underwriter.

In case of non-fulfilment of this obligation the underwriter is not responsible for any casualty happening to the goods so shipped.

818. Every casualty shall be notified to the underwriter so

soon as the party effecting the insurance or the assured, if the latter is aware of the insurance, receives information thereof; otherwise the underwriter is entitled to deduct from the claim for damage such amount as might have been saved if the notification had been made in due time.

819. When a casualty happens the assured is bound to do everything in his power to save the insured objects, as well as to avoid greater loss.

He shall, however, if possible, previously communicate with the underwriter respecting the steps to be taken.

Fourth Division.—Extent of the Risk.

Art. 820. The underwriter is responsible for all risks to which vessel or cargo is exposed during the period of the insurance, so far as no stipulation to the contrary is contained in the following regulations or in the special agreement.

He shall bear more particularly—

(1) Risk arising from events of nature and other perils of the sea, even when occasioned by the default of a third party, such as: penetration by the sea-water, stranding, shipwreck, sinking, fire, explosion, lightning, earthquake, damage by ice, etc.

(2) Risk of war and of any government dispositions.

(3) Risk of arrest on the application of a third party, and not caused by the default of the assured.

(4) Risk of theft, as also the risk of piracy, plunder and other acts of violence.

(5) Risk of the hypothecation of the insured goods for the prosecution of the voyage, or of their disposal, sale, or conversion for the same purpose (Arts. 538-541, 732).

(6) Risk of dishonesty or default of any member of the crew, so far as a loss may thereby be entailed upon the insured object.

(7) Risk of collision, no matter whether the assured sustains loss from the collision directly, or indirectly by being required to make good damage inflicted upon a third party.

821. The following damages are not at the charges of the underwriter:—

(1) In the case of an insurance on ship or freight—

Damage occasioned in consequence of the vessel having been sent to sea in an unseaworthy condition, or improperly fitted out or manned, or without the necessary papers (Art. 513).

Damage which, except in the case of collision, arises out of the liability of the owner to make good damage occasioned to a third party by a member of the crew (Arts. 485 and 486).

(2) In the case of an insurance upon the ship—

Damage to the vessel and her inventory resulting only from wear and tear in the ordinary employment of the vessel.

Damage to the vessel and her inventory arising only from old age, decay, or worm.

(3) In the case of an insurance upon goods or freight—

Damage arising from the natural condition of the goods, more particularly from internal corruption, shrinkage, ordinary leakage, etc., or from defective packing of the goods, or occasioned thereto by rats or mice; when, however, the voyage has been unusually protracted by an accident, for which the underwriter is responsible, the latter shall make good the damages described under this head to the same extent as they are attributable to the delay.

(4) Damage arising out of any default of the assured, and in the case of insurance of goods or imaginary profit such damage also as may have been occasioned by a default of the shipper, consignee, or supercargo in their respective capacities.

822. The liability of the underwriter to make good a damage attaches also when the assured has a claim for compensation against the master or some other person. The assured may in the first instance require payment from the underwriter. He shall, however, give all necessary assistance to the underwriter for the effectual prosecution of such claim, and shall likewise, at the underwriter's expense, exercise all

suitable precaution, according to the circumstances of the case, for securing the claim by withholding the freight, by causing the vessel to be arrested, or by other proper means (Art. 819).

823. When a vessel is insured for a voyage the risk of the underwriter begins from the time when the taking on board of cargo or ballast commenced, or, if neither cargo nor ballast is to be taken on board, from the time of the departure of the vessel. It terminates with the completion of the discharge of the cargo or ballast at the port of destination.

When the discharge is unduly delayed by the assured, the risk terminates at the time when the discharge would have been completed if such delay had not taken place.

When, before completion of the discharge, cargo or ballast has been taken in for another voyage, the risk terminates at the time when such shipment of cargo or ballast has been commenced.

824. When the insurance is effected upon goods, imaginary profit, or the commission to be earned on account of goods shipped, the risk commences at the time when the goods leave the shore for the purpose of being loaded in the vessel or the lighters; it terminates at the time when the goods again reach the shore at the port of destination.

When the discharge is unduly delayed by the assured, or, in the case of an insurance on goods or imaginary profit, by the assured or by one of the persons mentioned in Art. 821, No. 4, the risk terminates at the time when the discharge would have been completed if such delay had not taken place.

The underwriter takes the risk of such use of lighters in connection with the shipment or discharge as may be in accordance with the custom of the port.

825. In the case of insurance upon freight, the risk arising out of accidents to which the ship and through it the freight are exposed commences and terminates at the same moment, at which the risk would commence and terminate, in the case of an insurance upon ship for the same voyage; the risk arising out of accidents, to which the goods and through them the freight are exposed, commences and terminates at the same moment at which the risk would commence and terminate in case of an insurance upon goods for the same voyage.

With respect to insurance upon passage moneys, the risk commences and terminates at the same moment as it would commence or terminate with an insurance upon the ship.

The underwriter on freight and passage moneys is only responsible for a casualty happening to the vessel, so far as contracts of affreightment or for the conveyance of passengers have already been entered into; and, when the owner ships goods on his own account, only so far as such goods have already left the shore for the purpose of being loaded in the vessel or in lighters.

826. In the case of insurance upon bottomry and average moneys the risk commences at the time the advances are made, or, when the assured has himself provided the average moneys, at the moment of their being expended; it terminates at the moment at which it would terminate if the insurance were taken upon the objects which have been hypothecated, or for which the average moneys have been expended.

827. The underwriter's risk, when commenced, continues throughout the stipulated period or the insured voyage without interruption. The underwriter more particularly takes also the risk of casualty during the stay in a port of distress or an intermediate port, and, in the case of an insurance upon an out-and-home voyage, during the stay of the vessel in the port of destination of the outward voyage.

When the goods must be temporarily discharged or when the vessel must be taken ashore for repairs, the underwriter is liable also for the risk during the time that the goods or the vessel are ashore.

828. If, after inception of the risk, the insured voyage is voluntarily or by compulsion abandoned, the port in which the voyage terminates takes the place of the port of destination with respect to the termination of the risk.

When, after abandonment of the voyage, the goods are forwarded to the port of destination otherwise than by the vessel named for their conveyance, the risk continues to attach with respect to such goods, even if they are forwarded wholly or in part by land. The underwriter in such cases bears also the expense of the previous discharge, the expense of the temporary warehousing, and the excess of expense incurred

in forwarding the goods even if they have been forwarded by land.

829. The prescriptions of Arts. 827 and 828 apply only when not in contradiction to the stipulations of Arts. 814 and 816.

830. When the period of insurance is stipulated in days, weeks, months, or years, the time shall be computed according to the calendar, and the day from midnight to midnight. The underwriter bears the risk during the day of its commencing as well as of its terminating.

With respect to computation of time, the reckoning at the place where the ship happens to be is decisive.

831. Should the vessel be insured upon a time policy, and at the expiration of the period agreed therein be in course of a voyage, the insurance shall be considered, in default of an agreement to the contrary, to be prolonged until the arrival of the vessel in the next port of destination, and, if the discharge takes place in such port, until the termination of the discharge (Art. 823). The assured is, however, at liberty to waive such prolongation by notice to the underwriter before the sailing of the vessel.

In case of prolongation the assured shall continue to pay the agreed time premium for the period of such prolongation, and, if the vessel should be missing, then until the expiration of the time when the assured becomes entitled to claim payment upon her as a total loss for want of news.

In case of waiver of the prolongation no claim can be made upon the underwriter on the ground of the ship being missing, if the period allowed for receipt of news does not terminate until after the expiration of the period of insurance.

832. In the case of an insurance effected for one or other of several ports the assured may select one from amongst these ports ; in the case of an insurance for two or more ports the assured is entitled to visit every one of the ports mentioned.

833. When the insurance has been effected for several ports, or when the assured has reserved the right to call at several ports, the assured is permitted to visit such ports only in the stipulated order, or, in default of any agreement, then in the order which the ordinary course of the voyage would demand ;

he is, however, not obliged to visit all the various ports named.

So far as the contrary does not appear upon the face of the policy the order in which the ports are named therein is considered to be the order stipulated.

834. The underwriter is responsible for—

(1) Contributions to general average, including such as the assured has himself to bear on account of damage sustained by him; contributions to which, in conformity with Arts. 635 and 732, the principles of general average apply, being placed on the same footing as contributions to general average.

(2) Sacrifices which would belong to general average if the vessel had had goods on board other than such as belonged to the owner.

(3) Other outlay necessarily or judiciously incurred with the view of saving the property, as also of avoiding heavier loss (Art. 819), even if the measures resorted to have proved unsuccessful.

(4) Expenses rendered necessary for the investigation and determination of the loss falling upon the underwriter, more especially expenses of survey, valuation, sale, and of making up the average statement.

835. The liability of the underwriter to make good contributions to general average and such other contributions as are placed on the same footing as general average, is regulated by the average statement made up at the proper place, whether at home or abroad, in conformity with the laws in force at the place where it is made up. More especially, the assured who has sustained a general average loss shall not demand from the underwriter more than the amount of the loss as shown by the average statement; but the underwriter on the other hand is liable for the whole of such amount, the insurance value more particularly not being taken into consideration.

Neither is the assured entitled to claim against the underwriter payment of damages which, according to the law of the place where the average statement has been prepared, do not belong to general average, on the plea that such damages would

be general average, according to other law, more particularly according to the law in force at the place where the insurance has been effected.

836. The underwriter, however, is not responsible for contributions referred to in Art. 835, so far as they result from an accident for which the underwriter is not responsible according to the contract of insurance.

837. When the average statement has been made up by a person authorised thereto either by law or custom, the underwriter may not contest its correctness because the laws of the place, where it has been made up, have not been adhered to and the assured has suffered loss thereby, unless the latter has been himself the cause of such additional loss by insufficient attention to his rights.

The assured shall, however, cede to the underwriter his claims against parties unduly benefited at his expense.

On the other hand, the underwriter is at liberty in all cases to dispute the correctness of the average statement as against the assured, in so far as a loss sustained by the assured himself for which he would not have been entitled to indemnification according to the law of the place where the average statement was made up, shall nevertheless have been treated as general average.

838. With respect to a loss suffered by the assured, and either belonging to general average or claimable on the same footing as general average, the underwriter, if the regular course of procedure necessary to ascertain and apportion the damage has been commenced, is liable to make good amounts payable to the assured, only so far as the assured has not been able to recover even by an action at law the compensation due to him, if such a course were properly open to him.

839. If, without the fault of the assured, the regular course of procedure has been neglected, he may claim against the underwriter direct, subject to the stipulations of the contract of insurance, the whole amount of his loss.

840. The underwriter is liable for the damage only to the extent of the amount insured.

He shall, however, make good in full the expenses men-

tioned in Art. 834, Nos. 3 and 4, even if the total claim so arising should exceed the sum insured.

If in consequence of a casualty such expenses have already been occasioned—for example, if an outlay has been incurred for redemption or reclamation, or if liabilities have already been incurred for the purpose of replacing or repairing any objects damaged by such casualty, for instance, if average moneys have for such purpose been expended, or if the assured have already paid contributions to the general average, or if the assured have already become personally liable to pay such contributions, and should, at a subsequent period, a new accident happen, the underwriter is liable to make good claims arising out of the later accident to the extent of the whole sum insured, irrespective of the former outlays and contributions for which he is responsible.

841. After the occurrence of a casualty, the underwriter is entitled, by payment of the full amount insured, to exonerate himself from all further liability arising out of the contract of insurance, more particularly from the obligation to reimburse expenses rendered necessary for the salving, preservation and rehabilitation of the interest insured.

When at the time of the occurrence of the casualty a portion of the insured objects had already ceased to be exposed to the risk which the underwriter has taken upon himself, the latter, if he avail himself of his rights under par. 1, shall not be required to make good that proportion of the assured sum which would apply to such portion.

The underwriter, by payment of the insured sum, acquires no right to the objects assured.

Notwithstanding the payment of the insured sum, the underwriter is liable to make good such expenses as may have been incurred for the salving, preservation or rehabilitation of the objects insured, before the assured had received notice of his intention to avail himself of this right.

842. The underwriter, under penalty of forfeiture of the right granted to him by Art. 841, shall make known to the assured his intention to avail himself of such right at latest on the third day from the expiration of that day, on which the assured has informed him, not only of the casualty, its

nature and immediate consequences, but also, so far as they are known to the assured, of all other circumstances connected therewith.

843. When the insurance has not been effected upon the full value, the underwriter is is only responsible for the contributions, sacrifices and expenses mentioned in Art. 834, in the same proportion that the sum insured bears to the insurable value.

844. The obligation of the underwriter to make good a loss is neither cancelled nor diminished by the occurrence of a fresh casualty, or even of a total loss, arising out of a danger which is not at the risk of the underwriter.

845. The underwriter is not liable to make good particular averages when, irrespective of the expenses necessary to investigate and ascertain the amount of the damage (Art. 834, No. 4), they do not exceed 3 per cent. of the insurable value; when, however, they amount to more than 3 per cent., the underwriter shall make good such losses without deduction of the 3 per cent.

When the vessel has been insured for time or for several voyages, the 3 per cent. shall be calculated for each single voyage. The meaning of the term "voyage" is defined by Art. 757.

846. The underwriter shall make good the contributions, sacrifices and expenses defined under Art. 834, Nos. 1-3, even when they do not amount to 3 per cent. of the insurable value. The same, however, are not to be taken into consideration in computing the 3 per cent. mentioned in Art. 845.

847. Should it have been agreed that the underwriter shall be exempted from a certain percentage, the provisions contained in Arts. 845 and 846 are to be applied, with this modification, that the amount of percentage mentioned in the contract is substituted for the 3 per cent. therein enacted.

848. Should it have been agreed that the underwriter shall not be answerable for the risk of war, and that the insurance against other risks shall only run until a molestation of war occurs, the underwriter's risk terminates at the moment when the danger of war begins to exercise an influence upon the voyage, more particularly, therefore, when the commencement

or continuation of the voyage is prevented by men-of-war, privateers, or by blockade, or delayed for the purpose of avoiding the dangers of war; or when the vessel from such a cause deviates from its course, or when the master loses the free control over the vessel through molestation of war.

An agreement of the nature indicated in par. 1, shall be presumed if the contract has been concluded with the clause: "free from molestation of war".

849. Should it have been stipulated that the underwriter shall be exempt from the risk of war, but be liable for all other risks, even after a molestation of war has commenced, the underwriter's risk terminates only with the condemnation of the insured object, or so soon as it would have terminated if the risk of war had not been excepted; the underwriter is, however, not responsible for the damages caused immediately by danger of war; he is therefore not answerable more particularly—

For confiscation by any Powers engaged in war;

For seizure, damage, destruction and plunder by men-of-war or privateers;

For expenses arising out of arrest and reclamation, out of blockade of the port where the vessel is lying, or warning away from a port under blockade, or out of voluntary delay on account of risk of war;

For the following consequences of such a delay: deterioration and diminution of the goods, expense and risk of their discharge and warehousing, expense of their forwarding.

In doubtful cases it is presumed that a damage has not been occasioned by risk of war.

An agreement of the nature indicated in par. 1 shall be more particularly presumed to exist when the contract has been concluded with the clause: "only against dangers of the sea".

850. If the contract has been concluded with the clause: "for safe arrival," the underwriter's risk terminates at the moment when the vessel has anchored, or been moored in the port of destination at the customary or proper place.

The underwriter is further only responsible—

(1) In case of insurance on the ship, when either a total loss occurs, or when the vessel is abandoned (Art.

861) or sold as incapable or unworthy of repair in consequence of a casualty happening previous to its arrival at the port of destination (Art. 873).

(2) In case of insurance on goods, when the goods, or a portion of them, in consequence of a casualty do not reach the port of destination, more particularly when before reaching such port they are sold in consequence of an accident. If the goods reach the port of destination the underwriter is neither answerable for an injury nor for a loss resulting from an injury.

The underwriter shall, moreover, under no circumstance be liable for the contributions, sacrifices and expenses coming under Art. 834.

851. If the contract has been concluded with the clause "free of damage except in case of stranding," the underwriter is not liable to make good a loss arising out of a damage, no matter whether such loss consists in a diminution of value, or in a total or partial loss, and more particularly in the arrival of the goods at the port of destination in an utterly spoiled and altered state, or from their having been sold during the voyage on account of damage and threatening deterioration, unless the vessel or the lighter in which the insured goods were laden has been stranded. The following perils of the sea are considered equivalent to a stranding, *viz.*: capsizing, sinking, breaking up of the hull, shipwreck, and every other casualty of the sea by which the vessel or lighter has become incapable of repair.

If a stranding or some other casualty of the sea considered as equivalent thereto has occurred, the underwriter is liable for every loss exceeding 3 per cent. (Art. 845) arising out of such casualty, but not for any other injury. Any injury which might possibly have been caused by the accident which has befallen the vessel shall be presumed to have been actually caused thereby.

For every loss not arising out of a damage the underwriter is liable, no matter whether a stranding or another of the above-mentioned accidents has happened or not, in the same manner as if the contract had been concluded without the clause. Under all circumstances he is liable for contributions, sacrifices and expenses mentioned in Art. 834, Nos. 1, 2 and

4; for those expenses, however, mentioned under Art. 834, No. 3, only when they have been expended in order to avoid a loss which would have fallen upon him.

A damage caused by fire without spontaneous combustion or by extinction of such fire, or by bombardment, is not considered as an injury from which the underwriter is exonerated by the above clause.

852. If the contract has been concluded with the clause "free of breakage except in case of stranding," the enactments of Art. 851 are applicable with the modification that the underwriter is liable for breakage to the same extent as according to Art. 851 he is liable for damage.

853. A stranding in the sense of Arts. 851 and 852 takes place when the vessel under circumstances not incidental to the ordinary navigation takes the ground, and is not got off; or, is got off, but either—

(1) Only by resorting to extraordinary measures, such as: cutting away masts, jettison or discharge of a portion of the cargo, etc., or by the occurrence of a tide unusually high, not, however, solely by the application of ordinary measures, such as heaving on the anchor, backing the sails and the like; or,

(2) Only after the vessel has sustained material damage to the hull from having taken the ground.

Fifth Division.—Extent of the Damage.

Art. 854. A total loss of the vessel or the goods occurs when the vessel or the goods have been destroyed, or when they have been withdrawn from the assured without hope of their recovery, particularly when they have been irrecoverably sunk or have been so damaged as to lose their original properties or have been declared good prize. A total loss of the vessel is not nullified by separate portions of the wreck or of the inventory being saved.

855. A total loss of the freight occurs when the whole freight has been lost.

856. A total loss, with regard to imaginary profit or to commission expected on arrival of the goods at the place of

destination, occurs when the goods have not reached their place of destination.

857. A total loss with regard to bottomry or average moneys occurs when the objects which have been bottomried, or for which average moneys have been advanced or expended, have either been subjected to total loss or to other accidents in such a degree that in consequence of injuries, hypothecations, or other liabilities thereby occasioned nothing has been left to cover such moneys.

858. In case of total loss the underwriter has to pay the full amount insured, without prejudice, however to such reductions if any as may be allowed according to Art. 800.

859. If in case of total loss anything has been saved before the payment of the sum insured, the proceeds of the objects saved shall be deducted therefrom. If the insurance was not effected for the full value, only a proportionate part of the value saved is to be deducted from the sum insured.

On payment of the sum for insurance the rights of the assured upon the insured object pass to the underwriter.

If a total or partial salvage occurs after the payment of the insured sum, the underwriter alone is entitled to such subsequent salvage. If the insurance was not made for the full value, the underwriter is only entitled to a proportionate part of what has been saved.

860. If in case of a total loss with regard to imaginary profit (Art. 856) the goods have during the voyage been so advantageously sold, that the net proceeds amount to more than the insurable value of the goods, or when more than that value has been paid as indemnity for them, if they have been sacrificed in case of general average or if they are to be made good in conformity with Arts. 611 and 612, the surplus is to be deducted from the insured sum of the imaginary profit.

861. The assured is entitled to demand payment in full of the insured sum upon cession of his rights against the insured object in the following cases (abandonment)—

(1) When the vessel is missing.

(2) When the object of the insurance is in danger from the fact of the vessel or goods being laid under embargo, or seized by a belligerent, or otherwise arrested by

order of government, or captured by pirates, and not being released within a period of six, nine, and twelve months, according as the detention, seizure, or capture has occured—

(*a*) In a European port or on a European sea inclusive of all ports or parts of the Mediterranean, of the Black Sea, and of the Sea of Azof; or,

(*b*) In any other water, but on this side of the Cape of Good Hope or of Cape Horn; or,

(*c*) In any water on the other side of either of these promontories.

The periods are to be calculated from that day on which the accident has been notified to the underwriter by the assured (Art. 818).

862. A vessel which has commenced a voyage is to be considered as missing, when it has not reached the port of destination within the time allowed, and when the interested parties have received no news about the vessel within such period.

The time allowed as the period of presumptive loss amounts—

(1) To six months for sailing vessels and four months for steamers, when both the port of departure and the port of destination are European ports;

(2) To nine months for sailing and steam ships if either the port of departure or the port of destination is an extra-European port, but situate on this side of the Cape of Good Hope and of Cape Horn; and to twelve months for sailing and steam vessels if the said non-European port is situate on the other side of either of the said promontories.

(3) To six, nine, or twelve months respectively for sailing and steam vessels, when both the ports of sailing and destination are extra-European ports, according as the average duration of the voyage may be taken as not more than two, not more than three, or more than three months.

In doubtful cases the longer term must be allowed.

863. The period of presumptive loss is calculated from the day on which the vessel commenced her voyage. If, however, since the sailing, intelligence respecting her has been received, the term allowed for presumptive loss shall be calculated from the day to which the last information reaches for such a period as would be granted if the voyage had commenced at the point where according to reliable information the vessel was last seen.

864. The declaration of abandonment must have been communicated to the underwriter within the period allowed for abandonment.

The period allowed for abandonment amounts to six months, when in case of presumptive loss of the vessel (Art. 861, par. 1, No. 1), the port of destination is a European port, and when in the case of detention, seizure or capture (Art. 861, par. 1, No. 2), the same has taken place in a European port or a European sea, inclusive of all ports or parts of the Mediterranean, of the Black Sea, and of the Sea of Azof. In other cases the period allowed for abandonment amounts to nine months. The period allowed for abandonment commences at the expiration of the terms mentioned in Arts. 861 and 862.

In case of re-insurance the period allowed for abandonment begins at the expiration of the day on which the re-insured underwriter has received the declaration of abandonment from his assured.

865. After the expiration of the period allowed for abandonment an abandonment is inadmissible, without prejudice to the rights of the assured to claim compensation for a loss upon other grounds.

When in case of a presumptive loss of the vessel the period allowed for abandonment has not been kept, the assured, although entitled to demand payment of a total loss, shall nevertheless, in case the assured object is again brought to light, and it appears thereby that no total loss had occurred, refund the sum insured to the underwriter at his request and on his relinquishing the rights acquired under Art. 859 by payment of the sum insured, and shall be contented to receive instead compensation for a partial loss if any has been sustained.

866. In order to be valid the declaration of abandonment must be made without reserve or condition, and must extend

to the whole object insured, so far as the latter at the time the accident happened was exposed to the perils of the sea.

If, however, the insurance was not concluded for the full value, the assured is only bound to abandon a proportionate part of the insured object.

The declaration of abandonment is irrevocable.

867. The declaration of abandonment is devoid of legal effect, if the circumstances upon which it is based are not confirmed or have ceased to exist at the time the declaration is made. On the other hand, it continues binding upon both parties even when, at a subsequent period, circumstances supervene, the earlier occurrence of which would have precluded the right to abandon.

868. By the declaration of abandonment all rights of the assured with respect to the insured object are transferred to the underwriter.

The assured is bound to secure the underwriter against all liens attaching to the abandoned object, at the time of the declaration of abandonment, unless the same arise out of perils for which the underwriter would be liable according to the contract of insurance.

If the vessel is abandoned, the underwriter is entitled to the net amount of freight of the voyage on which the casualty has occurred, so far as the freight has not been earned until after the declaration of abandonment. This portion of the freight shall be calculated in conformity with the principles laid down for ascertaining the amount of distance freight.

If the freight has been separately insured the underwriter thereon shall make good the loss thereby entailed upon the assured.

869. Payment of the sum insured can only be demanded, when the documents justifying the abandonment have been communicated to the underwriter, and a proper interval has been allowed for their examination. If the abandonment takes place on account of presumptive loss of the vessel, the documents to be communicated must include reliable certificates respecting the date of sailing from the port of departure and respecting its non-arrival at the port of destination during the period allowed for presumptive loss.

The assured shall, at the time of making his declaration of abandonment, so far as lies in his power, inform the underwriter whether any and what other insurances have been effected upon the object abandoned, also whether any and what bottomry liabilities and other incumbrances thereon are in existence. If this information has been omitted the underwriter may refuse payment of the sum insured until the information has been supplied; if a term of payment has been agreed, such term commences only from the time when the supplementary notification is given.

870. The assured is obliged, even after declaration of abandonment, to give attention to the saving of the insured objects and the prevention of increased loss as laid down by Art. 819, and shall continue to do so until the underwriter himself is in a position to take the matter in hand.

If the assured should receive information that any object looked upon as lost has been again brought to light, he shall immediately acquaint the underwriter thereof, and shall, at his request, render him every assistance necessary for the recovery or realisation of the object in question.

The underwriter shall repay the expenses; he shall also provide the assured, at his request, with a sufficient advance.

871. If the underwriter acknowledges the validity of the abandonment the assured shall supply him, at his request and expense, with a certified attestation of the transfer of rights effected in consequence of the declaration of abandonment according to Art. 868, and shall deliver to him the documents relating to the objects abandoned.

872. In case of a partial damage to ship, the damage consists of the amount of the expense of repairs, to be ascertained in conformity with Arts. 709 and 710, so far as the same relate to damages at the risk of the underwriter.

873. When the ship has in the manner prescribed in Art. 530 been pronounced incapable or unworthy of repair (Art. 479), the assured may, as far as the underwriter is concerned, put the vessel or the wreck up for sale by public auction; in case of sale the loss consists of the difference between the net proceeds and the insured value.

The risk of the underwriter terminates only with the sale

of the vessel or of the wreck; the underwriter is also answerable for the due payment of the purchase money.

In estimating the value of the ship in a sound state, which is necessary for the purpose of determining whether it is unworthy of repair, its insurable value, no matter whether such value have or have not been estimated, is left altogether out of the question.

874. The commencement of such repairs does not preclude the exercise of the rights of the assured under Art. 873, when important damages have only subsequently appeared, which the assured had innocently failed to discover.

When the assured avails himself subsequently of this right, the underwriter shall pay separately the amounts already expended in repairs, so far as in consequence of such repairs a higher price has been realised at the sale of the ship.

875. When goods arrive at the port of destination in a damaged state, the percentage of value lost upon the goods shall be ascertained by a comparison of their gross value there in damaged state, with the gross value which they would have had there in their sound state. The same percentage of the insurable value is to be taken as the amount of the damage.

The value of goods in damaged state is to be ascertained by public sale, or, if the underwriter consents, by valuation. The value which the goods would have had in a sound state is to be ascertained according to Art. 611, par. 1.

The underwriter shall also make good the expenses of survey, valuation and sale.

876. When a portion of the goods is lost in the course of the voyage, the damage consists in the same percentage of the insurable value as has been lost of the value of the goods.

877. When goods have been sold in the course of the voyage in consequence of a casualty, the damage consists in the difference between the net proceeds of the goods after deduction of the freight, duties and sale expenses, and their insurable value.

The risk taken by the underwriter terminates only upon the sale of the goods; the underwriter is also answerable for due payment of the purchase money.

The prescriptions of Arts. 834-838 are not effected.

878. In case of partial loss of the freight, the loss consists of such portions of the stipulated freight, or, if no freight has been stipulated, then of the current freight, as shall have been lost.

If the freight has been valued, and such valuation is, in conformity with Art. 793, par. 4, decisive as to the loss to fall upon the underwriter, then the loss consists of the same percentage of the valuation as has been lost of the stipulated or current freight.

879. If, in the case of imaginary profit or of commission expected upon arrival of the goods, the latter arrive in a damaged condition, the damage consists in the same percentage of the amount insured upon profit or commission as the damage to the goods ascertained according to Art. 875 bears in proportion to the insurable value of the goods.

If some portion of the goods do not reach the port of destination the damage consists of the same percentage of the amount insured upon profit or commission as the value of the goods not arrived in the port of destination is to the value of all the goods.

If in the case of insurance upon imaginary profit the stipulations of Art. 860 apply to the non-arrived portion of the goods, the excess referred to in Art. 860 shall be deducted from the loss.

880. With respect to bottomry and average moneys in case of partial loss the damage consists of the deficiency resulting from the fact that the object bottomried, or upon which average moneys have been advanced or expended, may from subsequent accidents have become insufficient to cover the bottomry or average moneys.

881. The underwriter shall pay the full amount of the damage calculated according to Arts. 872-880 when the full value has been insured, without prejudice, however, to the provisions of Art. 800; if the insurance has not been effected upon the full value, the underwriter shall only make good a proportionate part of such damage as stipulated by Art. 792.

Sixth Division.—Payment of Losses.

Art. 882. In order to be entitled to claim compensation for a loss the assured shall lay before the underwriter a statement of the claim.

He shall at the same time satisfy the underwriter by means of sufficient vouchers—

(1) Of his interest.

(2) That the insured object has been exposed to perils of the sea.

(3) Of the casualty which gives rise to the claim.

(4) Of the damage and its extent.

883. When the insurance has been effected by an agent the assured shall further show that the party taking the insurance was authorised by him to do so. When the insurance has been effected without authority (Art. 782) the assured must show the circumstances by which it is proved that the insurance was taken for his account.

884. Vouchers which owing, for instance, to the difficulty of procuring other evidence are ordinarily accepted in mercantile transactions without objection are generally to be considered as sufficient, more particularly—

(1) For proof of interest.

In case of insurance on the ship, the ordinary documents of ownership.

In case of insurance on goods, the invoices and bills of lading, so far as from their contents is apparent that the assured is entitled to the disposal of such goods.

In case of insurance on freight, the charter parties and bills of lading.

(2) As proof of shipment of the goods the bills of lading.

(3) As proof of the casualty, the extended protest, and the ship's log book; the sentence of the prize court in case of condemnation; reliable certificates as to the date of sailing of the vessel from the port of departure, and as to its non-arrival at the port of destination within the period allowed for presumptive loss in case of the latter.

(4) As proof of the damage and its extent, documents of survey, valuation, and sale by public auction, drawn up conformably to the laws or usages of the place where the damage was verified, also estimates of the expenses drawn up by experts, also the receipted accounts for repairs executed and other receipts for payments made; with respect to partial damage to the vessel (Arts. 872, 873), however, the documents of survey and valuation, and the estimates of repairs, are only admissible when damages arising from wear and tear, age, decay, or worm are duly separated therein, and when, at the same time, so far as was practicable, such experts have been employed, as have either been permanently and officially appointed or especially selected by the local tribunal, or by the German consul, or in default or in the absence of such officials, then by some other public authority.

885. An agreement to exonerate the assured from the burden of proving the circumstances mentioned in Art. 882, or any portion thereof, is valid, without prejudice, however, to the right of the underwriter to prove the contrary.

An agreement made at the time of the insurance of goods, that production of the bill of lading should be dispensed with, does away only with the necessity of proving the shipment.

886. When an insurance is effected by an agent, the party taking the insurance may, without production of a power of attorney from the assured, make use of the powers reserved to the assured by the contract of insurance, and may receive and enforce payment of the sums insured. Should, however, a policy have been issued, this rule applies only when the party taking the insurance produces the policy.

If the insurance has been taken without instructions, the party taking the insurance requires the consent of the assured in order to receive or enforce payment of the sums insured.

887. When a policy has been issued the underwriter shall pay the sums insured to the assured upon production of the policy.

888. The party taking the insurance is not bound to deliver the policy to the assured or to his creditors or to his assignees

in bankruptcy before his claims against the assured, with reference to the insured object, have been satisfied. In case of a loss the party taking the insurance may pay himself for such claims out of the amounts due from the underwriter, and retain the amounts out of the insured sums when received, in preference to the assured and his creditors.

889. The underwriter makes himself responsible to the party taking the insurance, if he, while the latter is still in possession of the policy, prejudices his rights under Art. 888, either by payments to the assured or his creditors, or his assignees in bankruptcy, or by agreements entered into with such parties.

The provisions of the common law determine how far the underwriter makes himself responsible to third parties who have acquired an interest in the policy, by entering into agreements respecting their interests or by paying over sums insured without requiring cession of the policy, or without making the necessary endorsement thereon.

890. If the underwriter is called upon to pay the sums insured he may not, in case of an insurance effected as agent, set off claims which he may have against the party taking the insurance.

891. The assured may cede to a third party, not only claims for compensation due to him on account of an accident which has already occurred, but also possible claims to arise out of future accidents. If the policy has been issued to order, according to Art. 363, par. 2, the endorsement of the party taking the insurance is sufficient, in case of insurance as agent, for the validity of the first transfer.

892. When after the expiration of two months from the notification of the casualty the statement of claim (Art. 882) has, without fault of the assured, not as yet been produced, but the lowest amount due by the underwriter has been approximately ascertained, the latter shall pay this amount as on account of his liability, not however until expiration of the period stipulated for the payment of the sum insured. If the period allowed for payment is to commence from the time when the statement of claim has been laid before the underwriter, such period shall in the indicated case be calculated from

the time when the underwriter has received the preliminary estimate.

893. The underwriter shall make payment in advance of—

(1) Two-thirds of the amount claimable from him in cases of average on account of his liability to be subsequently ascertained, towards the expenses of salving, preservation or rehabilitation of the insured object.

(2) In case of capture of the ship or goods the full amount due from him towards the costs of the suit of reclamation, so far as the same may be rendered necessary.

Seventh Division.—Cancelling the Insurance and Repayment of the Premium.

Art. 894. When the adventure to which the insurance relates is wholly or partially abandoned by the assured, or when without his agency the insured object wholly or in part is not exposed to the risk which the underwriter was to bear, either the whole or a proportionate part of the premium may be reclaimed or withheld, less a suitable compensation due to the underwriter (ristorno).

When no specified amount is agreed upon or usual at the place where the insurance is effected, the compensation (allowance for ristorno) consists of one-half per cent. of the entire sum insured or of the corresponding portion thereof; if, however, the premium does not amount to 1 per cent. of the sum insured, then of one-half of the whole premium or of the proportionate part thereof.

895. If the insurance is invalid on account of want of insurable interest (Art. 778), or on account of over-insurance (Art. 786), or on account of double insurance (Art. 788), the premium may here also be reclaimed or withheld, with the exception of the compensation stated in Art. 894, provided that the party taking the insurance has acted *bonâ fide* in effecting the same, and, in case of an insurance as agent, the assured has also acted *bonâ fide* at the time of giving the order.

896. The rules laid down by Arts. 894 and 895 apply even if the insurance contract is void as against the underwriter on account of violation of the rules for giving information, or

for other reasons, even if the underwriter notwithstanding such invalidity would be entitled to the full premium.

897. A return of premium does not take place if the underwriter's risk has already attached.

898. If the underwriter has become insolvent, the assured may at his option either withdraw from the contract and reclaim or withhold the whole premium, or may take a new insurance at the expense of the underwriter according to Art. 789. He, however, may not exercise this option, if, previous to his withdrawing from the contract or taking a new insurance, sufficient security is given to him for the fulfilment of the liabilities of the underwriter.

899. If the insured object changes hands, the rights appertaining to the assured by virtue of the insurance contract, as regards possible future accidents, may be ceded to the new owner in such a manner, that the new owner is entitled to claim against the underwriter to the same extent, as if no transfer had taken place and as if the assured himself enforced the claims.

The underwriter takes no responsibility for perils which would not have arisen if no transfer had taken place.

He may not only make use of the same pleas and counterclaims to which he would be entitled against the new owner direct, but also of those which he might have been entitled to make use of against the assured; not, however, of such as do not arise out of the contract of insurance, except so far as they have been in existence previous to the notification of the transfer.

The legal effects of a transfer by endorsement of a policy made out to order are not affected by these enactments.

900. The provisions of Art. 899 are also applicable to insurances upon a share in a vessel.

If the vessel itself is insured, the same apply only when the vessel has changed owners in the course of the voyage. The commencement and termination of the voyage are determined according to Art. 823. When the vessel has been insured for time or for several voyages (Art. 757), the insurance only remains in force, in case of a change of ownership during a voyage, up to the discharge of the vessel in the next port of destination (Art. 823).

ELEVENTH PART.

Statutory Limitations.

Art. 901. The claims enumerated in Art. 754, Nos. 1-9, are only in force for one year. The limit extends, however, to two years—

(1) For claims of the crew arising out of contracts of service or wages, when the discharge has taken place on the other side of the Cape of Good Hope or of Cape Horn.

(2) For claims for compensation arising out of the collisions of vessels.

902. The limitation imposed by Art. 901 extends also to personal claims of the creditor against the shipowner or a person belonging to the crew.

903. The period of limitation is reckoned—

(1) With respect to claims of the crew (Art. 754, No. 3), from the expiration of the year in which the contracts of service or wages come to an end, and, if the institution of legal proceedings is sooner possible and admissible, from the expiration of the year in which such possibility and admissibility takes place; the right, however, to demand payments in advance or on account does not affect the commencement of the period of limitation.

(2) With respect to claims for injury to or for undue delay in the delivery of goods and personal effects (Art. 754, Nos. 7 and 9) and for contributions to general average (Art. 754, No. 5), from the expiration of the year in which the delivery has taken place; with respect to claims for non-delivery of goods, from the expiration of the year in which the vessel reaches the port where the delivery should have taken place, and, if such port is not reached, from the expiration of the year in which the party interested first receives notice of that fact as well as of the damage.

(3) With respect to claims caused by the default of a member of the crew (Art. 754, No. 9) not coming

under No. 2 of this article, from the expiration of the year in which the party interested received notice of the damage; with respect, however, to claims for compensation arising out of the collision of vessels, from the expiration of the year in which the collision occurred.

(4) With respect to all other claims, from the expiration of the year in which the claim becomes due.

904. One year is also the period of limitation for the claims for which the goods are responsible with respect to bottomry moneys, contributions to general average, salvage and assistance expenses, as also for all personal claims with respect to these moneys, contributions and expenses.

The period of limitation commences, as regards contributions to general average, from the expiration of the year in which the contributory goods have been delivered; with respect to other claims, from the expiration of the year in which they have become due.

905. Claims of the underwriter and of the assured arising out of the contract of insurance are not enforceable after five years.

The period of limitation commences from the expiration of the last day of the year in which the insured voyage has terminated, and, in case of insurance for time, from the expiration of the day on which the insured period terminates. In case of presumptive loss of the vessel, it commences from the termination of the day on which the period allowed for receipt of news comes to an end.

APPENDIX.

REGULATION FOR SEAMEN OF 27th DECEMBER, 1872.

WE, William, by the grace of God, German Emperor, King of Prussia, etc., etc., order in the name of the German Empire, with the consent of the Confederate Council and of the Parliament, as follows:—

FIRST DIVISION.

Introductory Regulations.

§ 1. The provisions of this law apply to all merchant vessels (law of 25th October, 1867) which have the right to carry the national flag.

§ 2. Master in the sense of this law is the commander of the vessel (ship-captain), and in default, or if he is prevented, his substitute.

§ 3. The "crew" includes all officers of the ship except the master; and in like manner the word "seaman" includes every ship's officer except the master.

Persons not belonging to the crew, but appointed on board a vessel as engineer, steward, or in any other capacity, shall be subject to the same rights and duties as have been enacted in this law with respect to the crew, there being no difference whether they have been engaged by the master or by the owner.

§ 4. Seamen's Offices, within the limits of the Confederation, are the authorities for engaging the crews in the several Confederate States and the consulates of the German Empire abroad.

The establishment of the authorities for engaging the crews,

or so-called shipping offices, within the limits of the Confederation, belong to the function of the territorial Government in accordance with their respective laws. The business conduct thereof is subject to the supervision of the empire.

SECOND DIVISION.

Sea Voyage Books and Articles.

§ 5. No one within the limits of the Confederation may take service as a seaman, unless he has previously proved his name and age before a Seamen's Office and received from it a sea voyage book.

If the seaman is a German, he must not be allowed to take service on board ship before he is fourteen years of age; he must also prove his military relations, and, if he is still subject to parental control or a minor, the consent of the father or guardian to take service on board ship.

A copy of the "Regulation for Seamen," and the law respecting the duty of German merchant vessels to take seamen in distress on board, must be handed to the seaman together with the sea voyage book.

§ 6. The parental consent, or that of the guardian, unless limited, is considered as given once and for ever.

In virtue of it the minor will be treated as of age in so far as wages agreements are concerned, as well as regarding the rights and duties and legal proceedings connected therewith.

§ 7. Whoever has received a sea voyage book must, in order to obtain a new sea voyage book, produce the old one or prove its loss. That this has been done will be certified in the new sea voyage book by the Seamen's Office.

If the loss be proved, a statement from the Seamen's Office will be added to this certificate respecting the former rank and service details, as well as respecting the length of service, in so far as the seaman can sufficiently prove the same.

§ 8. Whoever, according to the contents of the sea voyage book, has been engaged must not be allowed to enter a new engagement before he can prove the termination of the previous service by the proper entry in the sea voyage book

(§§ 20, 22). If in the opinion of the Seamen's Office such an entry cannot be adduced, but the termination of the service can otherwise be credibly proved, a statement entered into the sea voyage book by the Seamen's Office is to be of the same effect.

§ 9. The arrangement and price of the sea voyage book are fixed by the Confederate Council. The expedition thereof is free of charge and stamp duty.

The sea voyage book must state the military relations (§ 5) of the holder.

§ 10. The master has to regulate the engagement (shipping, discharging) of the crew according to the provisions of the following articles (§§ 11 to 22).

The seaman must be present at the engagement unless an unavoidable obstacle prevents him.

§ 11. The engagement consists in the announcement of the wages agreement concluded with the seamen before a Seamen's Office. It must take place for vessels lying within the limits of the Confederation under production of the sea voyage books before the commencement or continuation of the voyage, and for other vessels as soon as a Seamen's Office be reached.

§ 12. The engagement proceedings will be drawn up by the Seamen's Office as the ship's articles. If the persons belonging to the crew of a vessel are not engaged at the same time by one act, the further expedition will be on the basis of the first proceedings.

The ship's articles must contain: Name and nationality of the vessel, name and domicile of the master, name, domicile and rank of each seaman, and the conditions of the wages agreement, including any special arrangements.

In the ship's articles must be more specially stated what is due to the seamen for food and drink per day. Otherwise the arrangement of the articles will be fixed by the Confederation.

§ 13. If a seaman has been engaged after the ship's articles have been drawn up, the Seamen's Office has to enter such engagement on them.

§ 14. At every engagement effected within the limits of the Confederation, the Seamen's Office enters a statement thereof

and the date of commencement of the service into the sea voyage book of each seaman, which at the same time serves as a departure or sea passport. Beyond the limits of the Confederation such entry is only made when the sea voyage book is produced for this purpose.

The sea voyage book has for the duration of the service to be taken in charge by the master.

§ 15. If a seaman who has been engaged is, owing to an unavoidable occurrence, prevented from entering the service, he is obliged to render as soon as possible an account thereof to the master and to the Seamen's Office before which he was engaged.

§ 16. The discharge consists in the announcement of the termination of the services on behalf of the master and such of the crew as are to be discharged. It must take place as soon as the service is terminated and, unless otherwise agreed, before the Seamen's Office of the port where the vessel lies, and after loss of the vessel before the first Seamen's Office which can be reached.

§ 17. Before the discharge takes place the master must certify in the sea voyage book of the seaman about to be discharged the rank which he occupied, his other duty-relations and the time of his service, likewise, if particularly requested, a character as to ability. The latter must not be entered in the sea voyage book.

§ 18. The signatures of the masters to these entries and to the certificate of character (§ 17) are to be attested free of charge and stamp duty by the Seamen's Office before which the discharge takes place.

§ 19. Should the master refuse to give a certificate of character (§ 17), or should it contain accusations the correctness of which the seaman disputes, the Seamen's Office has to investigate the matter at the request of the latter, and to certify to the seaman the result of such investigation.

§ 20. The discharge of a seaman has, by the Seamen's Office, to be noted in the sea voyage book and on the ship's articles.

§ 21. After the expiration of the voyage or of the time to which the ship's articles and the engagement proceedings

therein contained refer, the same have to be delivered to the Seamen's Office before which the discharge took place.

The latter forwards the same to the Seamen's Office of the port of registry.

§ 22. Should any changes take place with the complement of the crew at a time when circumstances do not permit of such engagement (shipping, discharging) (§ 10) to be carried out in accordance with the above regulations, the master is obliged, as soon as he can reach a Seamen's Office, to complete the engagement there, giving the reasons which prevented this from being previously done, or, in case even this subsequent act is no longer possible, to report the fact.

An entry as to such report will be made by the Seamen's Office on the ship's articles as well as in the sea voyage book of the seaman concerned.

§ 23. The costs of such engaging and discharging, inclusive of the expedition of the ship's articles, have to be paid by the shipowner.

The stipulation of the costs to be fixed in equal amounts for all Seamen's Offices within the limits of the Confederation is reserved for the Confederate Council.

Until this has taken place the territorial governments shall stipulate the amount of the costs to be charged.

THIRD DIVISION.

Contract.

§ 24. The validity of the wages agreement does not depend upon being in writing.

§ 25. If on concluding the wages agreement no arrangement as to the amount of the wages is expressly arrived at, and any doubt arises as to its amount, those wages will be considered as agreed upon which the Seamen's Office of the port where the seaman was engaged declares as usual at the time of the engagement.

§ 26. If a seaman engages himself for any period, for which he is bound by a previous agreement, then the first concluded engagement has in preference the claim to be fulfilled.

If, however, an official engagement based on the later agreement has been effected, this has the preference should *no* official engagement for the first agreement have taken place.

§ 27. When a seaman has been engaged after the ship's articles have been executed, the stipulations made therein with the other seamen shall be applied to him in default of any arrangement to the contrary; he shall more especially only be entitled to the same wages which, according to the articles, are due to the other seamen of his rank.

§ 28. The obligation of the seaman to go on board with his effects and to enter upon his duties commences, unless any other agreement has been made, from the time of his engagement.

If the seaman delays to enter upon his duties for more than twenty-four hours, the master is authorised to withdraw from the engagement. The demands for any additional expenses to provide a substitute and for other losses arising out of the delay are not affected thereby.

§ 29. The seaman who after the engagement avoids entering upon or continuing his duties, can be forced by the master, through the Seamen's Office, to its fulfilment.

The costs arising therefrom have to be made good by the seaman.

§ 30. The seaman is obliged to obey unhesitatingly the orders of the master with regard to the service of the ship, and to perform at all times every work entrusted to him with regard to ship and to cargo.

He has to perform these duties not only on board of the vessel and in its boats, but in lighters and ashore, as well under ordinary circumstances as when under average.

Without permission of the master he is not allowed to leave the vessel until he is discharged. Should he have received such permission, he must return at the time fixed, but should no time have been fixed, before eight o'clock in the evening.

§ 31. Should the vessel be in port, the seaman may only under pressing circumstances be obliged to work more than ten hours per day.

§ 32. Should any danger of the seas arise, especially if shipwreck be threatened, or should any violence and attack

against ship or cargo be contemplated, the seaman must unhesitatingly render all assistance ordered for the preservation of ship and cargo, and he dare not, without permission of the master, leave the vessel so long as the master himself remains on board.

He is at the time of shipwreck, bound to render every assistance necessary for the safety of persons and their effects, as well as to take care and secure any parts belonging to the ship, its gear and the cargo, and all this in accordance with the master's orders, and to assist during any salvage operations on continuation of his wages and maintenance.

§ 33. The seaman, if so required, is bound to assist at the extending of the protest, and to confirm his depositions by oath. He has to fulfil this obligation on payment of travelling expenses and compensation for loss of time, even if the wages agreement has been terminated in consequence of the loss of the vessel (§ 56).

§ 34. If after the voyage has been commenced it is found that any seaman, with the exception of the mate, is incapable for the service for which he was engaged, the master is entitled to reduce his rank and to lower his wages in proportion.

If the master makes use of this power, he must, as soon as possible thereafter, inform the party concerned of such resolution, and to enter in the ship's log that this has been done, and when; before such intimation and entry have been given and made, the lowering of the wages does not take effect.

§ 35. In default of any other arrangement the wages shall be paid from the time of the engagement.

§ 36. In default of any other agreement the wages shall not be paid to the seaman until after the termination of the voyage or on his discharge, if such should previously take place. Should the vessel wholly or in part discharge the cargo in the first port of an intermediary voyage, the seaman may, if six months have elapsed since his engagement, demand one half of the wages due to him. In like manner the seaman is, after the expiration of a further six months from such date, entitled to the payment of half of the wages earned since.

§ 37. In default of any agreement the usage of the port where the seaman is engaged determines if, and to what

extent, before the commencement of the voyage advances on account of wages shall be made or any earnest-moneys are to be paid.

§ 38. All payments to seamen must, according to their choice, be made, unless otherwise agreed, either in cash or by slight draft on the owner.

§ 39. Before commencement of the voyage the master must open an account-book, in which all advances and payments on account of wages, as well as such earnest-moneys as have been paid, are to be entered. In this account-book the seaman must give a receipt for each payment. The master is likewise obliged to give to each seaman who demands it a special wages book and to enter equally therein any payment made on account of the wages of the holder.

§ 40. If the number of the crew decreases during the voyage and is not made up again, the amount of wages thus saved is, unless otherwise agreed, to be divided amongst the remaining seamen in proportion to their respective wages. No claim to division exists, however, if the decrease of the crew be caused by desertion and the effects of the deserted seaman did not remain on board.

If the number of the crew during the voyage be reduced by more than one-sixth, the master, at the request of the remainder of the crew, is obliged, should circumstances permit, to make up the deficiency.

§ 41. In all cases in which a vessel remains more than two years abroad, and should no other arrangement have been made, such seamen as have been two years in the service are entitled to an increase of wages if these are agreed for time.

This increase is to be determined as follows:—

(1) The ship's boy receives at the beginning of the third year the wages of an ordinary seaman as fixed by the ship's articles or the average amount shown by them, and at the beginning of the fourth year the wages of an able seaman as fixed by the ship's articles.

(2) The ordinary seaman receives at the beginning of the third year the wages of an able seaman as fixed by the ship's articles, and at the beginning of the fourth year one-fifth more.

(3) The remainder of the crew receive at the beginning of the third year one-fifth more and at the beginning of the fourth year a further one-fifth of the original amount of wages stated in the ship's articles. In the case *sub* No. 2 the ordinary seaman enters at the beginning of the third year into the rank of an able seaman.

§ 42. The demands of the master and of all persons belonging to the crew which arise out of any service and wages agreements, and who have been on board of a vessel which, according to Articles 866 and 867 of the German General Mercantile Law, is to be considered as missing, are due at the expiration of the time allowed for the calculation of the presumptive loss.

The termination of such service relations are to be reckoned from half a month after the day on which the last news from the vessel was received.

The amount of the demands has to be handed to the Seamen's Office of the port of registry, which has to arrange the payment to those entitled to receive them.

§ 43. The seaman is entitled to nourishment for account of the vessel from the time the service begins. He is only allowed to use the food and drink served out to him for his own requirements, and must not dispose, waste, or do away with it in any manner whatever.

§ 44. The crew is entitled to a protected and sufficiently ventilated space on board the vessel intended solely for them and their effects, and corresponding to their number and the size of the vessel.

If the seaman in consequence of a casualty or from other reasons cannot obtain shelter on board the vessel, other suitable provision is to be provided for him.

§ 45. The minimum of food and drink to be served out to the seaman per day (§ 43), the size and fitting up of the space set apart for the crew, as well as the minimum of medicines to be carried, are, in case of doubt, to be determined by the law of the port of registry.

The issue of more particular stipulations belongs to the Governments of the different countries.

§ 46. The master is, in case of an unusually long duration

of the voyage, or in case any casualties should have occurred, entitled to reduce the rations or to make a change respecting the choice of food and drink.

He must enter in the log-book when, why, and in what way the reduction or change took place.

If this is omitted, or if the arrangements made by the master prove unjustifiable and caused by his fault, the seaman is entitled to such an allowance as is equivalent to the privations suffered. The Seamen's Office before whom the discharge takes place shall decide about such demand under reservation of recourse to law.

§ 47. If an officer of a ship, or not less than three seamen, complain before a Seamen's Office that the vessel for which they were engaged is unseaworthy, or that the provisions which are on board for the wants of the crew as food and drink are insufficient or spoiled, the Seamen's Office must cause the vessel or the provisions to be examined and to enter the result in the log-book. It may also take care, in case the complaint is proved to be well founded, to provide the necessary remedy.

§ 48. If a seaman after having entered the service falls ill or is wounded, the owner shall defray the expenses of his care and curing.

(1) If the seaman, on account of the disease or the wound, did not commence the voyage up to the expiration of three months from the time he became ill or was wounded.

(2) If he enters upon the voyage and returns in the vessel to a German port up to the expiration of three months from the return of the ship.

(3) If he enters upon the voyage and returns in the vessel, but if such voyage does not terminate in a German port, then up to the expiration of six months from the return of the ship.

(4) If he had to be left behind ashore during the voyage up to the expiration of six months from the time that the vessel has continued such voyage.

Should the vessel not return to the port from which it started, the seaman is likewise entitled to be returned free of

expenses to that port (§§ 65, 66), or, at the option of the master, to a corresponding compensation.

§ 49. The sick or wounded seaman shall receive his wages—

If he does not commence the voyage, up to the time of discontinuing his duties.

If he enters upon the voyage and returns in the vessel up to the termination of the return voyage.

If he had to be left behind ashore during the voyage, up to the day on which he leaves the vessel.

If the seaman has been injured in defence of the vessel, he is besides entitled to a fair reward, which, eventually, shall be fixed by the judge.

§ 50. Paragraphs 48 and 49 are not to be applied to seamen whose decease or wounds have been caused by their own unlawful acts or who are suffering from syphilitic diseases.

§ 51. Should the seaman die after having entered the service, the owner shall pay the wages (§ 67) earned up to the day of his death and defray the burial expenses.

If a seaman is killed while defending the vessel, the owner has to pay in addition a fair reward, which, if necessary, is to be fixed by the judge.

§ 52. Documentary evidence must be produced by the master, attested by two ship's officers or other credible persons, as to the death of any seaman occurring after commencement of the service.

The document must contain day and hour of the death, the Christian and surname, the place of birth or domicile, and the age of the deceased as well as the supposed cause of death. It must be executed by the master and the witnesses called in.

As far as the property of the deceased seaman is on board, the master has to cause an inventory to be made to take care of it, and, if necessary, to sell it.

The inventory is to be made in presence of two ship's officers or other credible persons.

The property itself, or the proceeds realised by its sale, as well as any wages due, are to be given to the Seamen's Office

at which it first can be done, together with the inventory and certificate of death.

If the Seamen's Office abroad refuses to take charge of the property from special reasons, the master must deliver it to the first Seamen's Office at which the matter can best be arranged.

The rules of the laws respecting the keeping of the civil registers are not affected by the regulations of this first and third section.

§ 53. If the master dies during the voyage, the mate is bound to produce a document as to the death, and to take care of the property left in accordance with the above regulations (§ 52).

§ 54. The seaman is obliged to remain during the entire voyage, including compound voyages, in the service up to the conclusion of the return voyage, unless otherwise agreed in the contract of his engagement.

Under return voyage in the sense of above rule must be understood the voyage to the port from which the vessel started. If, however, the vessel comes from a non-European port, or from a port in the Black Sea, or Sea of Azof, and began the voyage at a German port, any of the voyages named hereafter are to be considered as return voyages, provided the master, immediately after arrival, declares to the crew the voyage as ended there, *viz.* :—

(1) The voyage to any German port.

(2) The voyage to any non-German port in the North Sea or to a Channel port or port in Great Britain.

(3) If the vessel commenced her voyage from the Baltic, the voyage to a non-German port of the Baltic or to a port in the Sound or Cattegat.

If the return voyage does not end in the port from which the vessel originally sailed, the seaman is entitled to a free return passage (§§ 65, 66) to that port and to his wages during the voyage, or, at his option, to a corresponding compensation.

§ 55. After the voyage is ended, the seaman cannot demand his dismissal before the cargo is discharged, the vessel cleaned and properly secured in port, or at any other place, and, if required, the protest extended.

§ 56. The engagement terminates when the owner loses the vessel through an unforeseen accident, more especially—

If it is lost.

If it has been condemned as incapable or unworthy of repair (Art. 479 of the new German General Mercantile Law) and if, in the latter case, it is, without delay, sold by public auction.

If it is captured by pirates.

If it is seized or detained and condemned as good prize.

In such a case the seaman shall not only receive the wages he may have earned (§ 67), but also a free return passage to the port where the vessel sailed from, or, at the master's option, a corresponding compensation.

§ 57. The master may, irrespective of the cases provided for in the agreement, discharge the seaman before the expiration of his time of service—

(1) As long as the voyage has not yet been commenced, if the seaman is incapable for the service for which he has been engaged.

(2) If the seaman commits a gross offence against his duty, more especially if he is guilty of repeated disobedience and continued refractory conduct or smuggling.

(3) If the seaman is guilty of theft, fraud, faithlessness, embezzlement, concealment of stolen goods, forgery, or any action punishable under the penal law by penal servitude.

(4) If the seaman is infected with syphilitic disease, or if, by doing an unlawful act, he has become invalided or wounded, and thereby incapacitated to work.

(5) If the voyage for which the seaman has been engaged cannot be commenced or continued on account of war, embargo or blockade, or on account of the prohibition of exportation or importation, or on account of any other casualty happening to ship and cargo.

The dismissal and reason thereof must be announced to the seaman, and, in cases of Nos. 2, 3, 4, be recorded on the ship's log.

§ 58. In the cases stated under Nos. 1-4 of § 57, the seaman is not entitled to more than the wages earned; but in case

of No. 5 he is, when the discharge occurs after the commencement of the voyage, not only entitled to the wages earned, but likewise to a free return passage (§§ 65, 66) to the port from which the vessel sailed, or, at the option of the master, to a corresponding compensation.

§ 59. The seaman who is engaged for a voyage and may, for other reasons than those stated in § 57, be discharged before the termination of the contract, shall, if such dismissal takes place before the commencement of the voyage, retain as a compensation the earnest-money and advances received in so far as they do not exceed the usual amount.

When no earnest-money or advances have been paid, he is entitled to one month's wages as a compensation.

If the dismissal occurs after the commencement of the voyage he is entitled to a free return passage (§§ 65, 66) to the port from which the vessel sailed, or, at the master's option, to a corresponding compensation. Besides the wages so earned he shall receive two months' wages if he be dismissed in a German port, or four months' wages if he be dismissed in a non-European port, but he is never to receive more than he would have been paid in case he had been dismissed at the termination of the voyage.

§ 60. Should, in conformity with the stipulation at the close of the preceding paragraph, the seaman after termination of the voyage be dismissed in a German port, then, in order to ascertain the wages due to him, besides those previously earned, the duration of the voyage of a sailing vessel is to be reckoned as follows :—

From Ports	To Ports	
	Of the North Sea.	Of the Baltic.
	Months.	Months.
(1) Of the North Sea up to 61° N. L., and of the English Channel, as - - - -	1	1½
(2) Of the Baltic and neighbouring waters, as -	1½	1
(3) In Europe, outside of the Channel and up to the Straits of Gibraltar, inclusive of the Azores, as well as of the North Sea beyond 61° N. L., and outside of the North Sea up to the North Cape, inclusive, as - - - - - - - -	1½	2
(4) Of the Mediterranean, Black Sea and Sea of Azof, as - - - - - - - -	2	2
(5) In Europe, eastwards of the North Cape, as	2	2
(6) Of the East Coast of America, from Quebec to Rio de Janeiro inclusive, as - -	2	2½
(7) Southwards from Rio de Janeiro to Cape Horn inclusive, as - - - - - -	2½	3
(8) Of the West Coast of America, from Cape Horn to Panama inclusive, as - -	3½	4
(9) Of the West Coast of Africa, north of the Equator, inclusive of the Canary and Cape Verd Islands, as - - - - -	2	2½
(10) Southwards from the Equator up to Cape of Good Hope inclusive, as - - -	2½	2¾
(11) On the other side of the Cape of Good Hope, this side of Cape Cormorin inclusive, the Red Sea and Persian Gulf - - -	3½	4
(12) Not included in the above - - - -	4	4

§ 61. The seaman is entitled to demand his discharge :—

(1) If the master is guilty of a gross violation of his duties towards him, more especially of ill-treatment and of withholding food and drink without sufficient cause;

(2) If the vessel changes its flag;

(3) If, after the termination of the outward voyage, an intermediate voyage has been decided upon, or if after termination of an intermediate voyage, in case two or three years having elapsed since the original engagement, the vessel is in a European (§ 70) or in a non-European port.

Change of owner or master does not entitle the seaman to demand his discharge.

§ 62. In case of § 61, *sub* 3, the dismissal cannot be demanded :—

(1) If the seaman has engaged himself for a longer time than therein stated ; but an engagement for an unlimited period, or with the general condition that after the termination of the outward voyage the service is to continue for all voyages that might thereafter be decided upon, shall not be considered as an engagement for such time.

(2) If the return voyage has been ordered.

§ 63. In cases *sub* 1 and 2 of § 61 the seaman has the same claims as in the case contemplated by § 59 ; in the case *sub* 3 he is not entitled to receive more than the wages earned (§ 67).

§ 64. The seaman, except the vessel changes its flag, shall not without consent of a Seaman's Office (§ 105) quit the service in a foreign country.

§ 65. Should, according to this law, a claim for a free return passage be established, it likewise includes maintenance during the voyage.

§ 66. The claim for a free return passage is satisfied if the seaman, who is able to work, should, with the consent of the Seamen's Office, be provided with such employment as is equivalent to his former position and with corresponding wages, on board of a German merchant vessel, which goes to the port from which his vessel originally sailed, or to a port near thereto ; in the latter case of course under payment of the corresponding allowance for the further free return passage (§ 65) to the port of original departure.

If the seaman is not a German, a vessel of his own nationality will be considered equivalent to a German vessel.

§ 67. In the cases of §§ 36, 51, 56, 58, 59 and 63, the wages earned—if they have originally been fixed at a lump sum for the whole voyage—shall be calculated in proportion to the services rendered and to the part of the voyage actually performed, taking of course into consideration the lump sum originally fixed.

In order to ascertain the wages for a single month, as referred to in §§ 59 and 60, the average duration of the voyage,

including the time for loading and discharging—of course considering the general condition of the vessel—is to be taken as basis for such compensation.

§ 68. The owner is answerable for the claims of the master, as well as of the other persons belonging to the crew, which arise out of all contracts respecting their services and wages, not only to the extent of ship and freight, but personally.

This provision takes the place of Art. 453 of the German General Mercantile Law.*

§ 69. The share in the freight or in the profits which may have been accorded to the seaman as reward shall not be considered as wages in the sense of this law.

§ 70. In the cases of §§ 59 and 61, the non-European ports of the Mediterranean, the Black Sea, and the Sea of Azof are to be considered as equal to European ports.

§ 71. The master shall not, without the consent of the Seamen's Office, leave a seaman behind in a foreign country. Should it be feared that, in case of such leaving behind, a seaman may become destitute, the granting of the necessary permission may be made dependent upon the master providing for a term a proper security against such an event up to three months.

The provisions of § 103 are not affected hereby.

FOURTH DIVISION

Disciplinary Regulations.

§ 72. The seaman is subject to the disciplinary power of the master.

The same begins with the commencement of the service and expires at its termination.

§ 73. The seaman is obliged always to be sober, and to observe towards everybody a proper and peaceable behaviour.

He is bound to treat the master and his other superiors with respect, and to obey unhesitatingly their several orders.

* This § is cancelled by the introductory law to the Amended German Mercantile Law.

§ 74. The seaman must, at the master's request, communicate truly and completely to him what he knows respecting all matters relating to the ship's service.

§ 75. The seaman shall not bring any goods on board without the master's permission; for any goods shipped by him contrary to this prohibition, whether for himself or for others, he shall pay the highest freight charged at the loading port for such voyages and goods at the time of shipment, without prejudice to any further claims for higher damages that may be proved.

The master is likewise authorised to throw the goods overboard should they be a danger to the ship or the cargo.

§ 76. The provisions of § 75 also apply if the seaman, without the master's permission, brings or causes to be brought on board brandy or other spirituous liquors or more tobacco than he requires for his own use on the intended voyage. Such spirituous liquors and tobacco as are brought on board in contravention of this provision are forfeited to the ship.

§ 77. The measures adopted by the master in conformity with the provisions of §§ 75 and 76 have to be entered into the log-book as soon as this can be done.

§ 78. If the ship is lying in port, the master is authorised, in order to prevent desertions, to take charge of the effects of the seamen until the departure of the vessel.

§ 79. The master is authorised to take all the requisite measures to uphold order and to secure the regularity of the service. For this purpose he may inflict as punishment the customary extra labour or moderately reduce the food; the latter, however, at the most for three days. Fines, corporal punishment, or imprisonment he must not inflict as correction.

The master is authorised to use every means necessary to enforce obedience to his orders in cases of opposition or continued disobedience.

He may adopt the proper measures of safety against the parties concerned, and, if necessary, put them in irons during the voyage.

Every seaman, if required, is obliged to render assistance to the master for the purpose of upholding order as well as for prevention or suppression of any refractoriness.

Abroad, the master must apply, in pressing cases, to the commanders of the available men-of-war of the Empire for assistance in order to uphold the necessary discipline.

§ 80. Every measure taken by the master in accordance with the provisions of § 79 has, as soon as this can be done, to be entered in the ship's log, stating likewise the cause thereof.

FIFTH DIVISION.

Punishments.

§ 81. A seaman who, after signing the ship's articles, absents himself in order to avoid entering on the service, is liable to a fine up to twenty thalers. But proceedings will only be taken if required.

If a seaman deserts or absents himself in order to avoid continuation of the service, he is liable to a fine up to one hundred thalers, or imprisonment up to three months. But proceedings will only be taken if demanded.

A seaman who deserts or secretes himself with the advance received in order to avoid the service engaged for, is liable to imprisonment up to one year, as threatened by § 298 of the penal code.

§ 82. In the case of the two last provisions of § 81, the seaman loses all claim to the wages earned unless he, for the purpose of continuing the service, before the departure of the vessel either voluntarily returns, or is brought back by force. The wages and, in so far as they are insufficient, his effects, may be taken to cover the demands of the owner arising out of the wages and hire agreement; and, in so far as the wages are not required for these purposes, they will be treated in accordance with § 107.

§ 83. When the seaman has withdrawn from the service in one of the cases of § 61, *sub* 1 and 3, without permission of the Seamen's Office (§ 64), he is liable to a fine up to the amount of one month's wages.

§ 84. A seaman who is guilty of gross violation of his duties is liable to a fine up to the amount of one month's wages.

As violation of the duties in this sense are to be specially considered:—

Carelessness while on watch.

Disobedience against an order of a superior concerning the service.

Improper behaviour towards superiors, towards other members of the crew, or towards passengers.

Leaving the vessel without permission, or overstaying leave.

Taking one's own or strange property from shipboard, or bringing goods or other objects on board without permission.

Allowing strangers on board, or any craft to come alongside the vessel.

Drunkenness on duty.

Waste, unauthorised disposal or putting away of provisions.

As far as regards ship's officers, the fine may be increased up to the amount of two months' wages.

If the wages are not agreed to be paid by time, the fine is fixed at an amount which, according to the opinion of the Seamen's Office, is equivalent to the monthly hire. But proceedings will only be taken if demanded. Such requisition is valid if made before the discharge of the person.

§ 85. The master, as soon as it can be done, has to enter every violation of duty (§ 84) in the ship's log-book with an exact statement of the facts, and, if practicable, to inform the seaman of the contents of such entry with express reference to the punishment threatened by § 84. Should such information not have been practicable, the reasons thereof are to be recorded in the log-book. If no entry has been made, no proceedings can be taken.

§ 86. A seaman who refuses lawful obedience to the repeated commands of the master or another superior is liable to imprisonment up to three months, or to a fine up to one hundred thalers.

§ 87. If two or more persons belonging to the ship's crew refuse lawful obedience to the master or another superior, the parties concerned are liable to imprisonment up to one year. The ringleader is liable to be punished with imprisonment up to three years.

If there are extenuating circumstances, a fine up to two hundred thalers may be imposed.

The ringleader to be punished with imprisonment up to two years.

§ 88. A seaman who incites two or more persons belonging to the ship's crew to commit an action which is punishable according to §§ 87 and 91, is liable to the punishment as a ringleader if the incitement causes the punishable action or a punishable attempt thereof.

If the incitement was without result, then in case of § 87 a fine up to one hundred thalers, in case of § 91 a fine up to two hundred thalers, or imprisonment up to one year, is to be inflicted.

§ 89. A seaman who undertakes to compel the master or another superior by force or threat of force, or by refusal of any duty, to take or not to take any action which he was in duty bound to perform, is liable to imprisonment up to two years. If there are extenuating circumstances, a fine up to two hundred thalers may be imposed.

§ 90. The same terms of punishment (§ 89) are to be applied to the seaman who resists the master or another superior by force or by threat of force or who assaults the master or another superior.

§ 91. Should one of the acts designated by §§ 89, 90, after preconcertion, be jointly committed by several seamen, the punishment may be increased up to the double amount of the threatened maximum.

The ringleader, as well as those who assault the master or another superior, are liable to penal servitude up to five years or to imprisonment of equal duration (even police supervision may be added if considered desirable). Should there be extenuating circumstances, an imprisonment of not less than three months is to be adjudged.

§ 92. A seaman who refuses to obey such commands of the master or another superior which are required for the prevention or suppression of the actions designated by §§ 89, 90, is liable to punishment as an accessory.

§ 93. A seaman is liable to a fine up to twenty thalers, or imprisonment up to fourteen days, who—

(1) In order to deceive a Seamen's Office in any proceeding as to the granting of a sea voyage book, or any entry therein, or respecting an engagement, distorts or suppresses true facts or insinuates false ones.

(2) Omits to be present at the engagement in accordance with § 10.

(3) Or, should he be prevented from entering the service, does not present the necessary proofs thereof to the Seamen's Office in accordance with § 15.

The contents of § 271 of the penal code are not affected by the provision as above, *sub* 1.

§ 94. Whoever makes a complaint before a Seamen's Office as to the unseaworthiness of the vessel, or the deficiency of provisions, although he is perfectly aware of the untruth of his assertions, and causes thereby a survey to be held, is liable to imprisonment up to three months.

Whoever makes a complaint before a Seamen's Office as to the unseaworthiness of the vessel, or the deficiency of provisions, although he might with a little care have ascertained the untruth of his assertions, and causes thereby a survey to be held, is liable to a fine up to one hundred thalers.

§ 95. The infliction of the punishment threatened by this section, or by that of any other legal penal code, is not excluded in consequence of the guilty party having already been subjected to disciplinary punishment on account of the deed of which he is accused. A disciplinary punishment suffered may, however, be taken into consideration in the decision of the Seamen's Office (§ 101), as well as in the judgment of any legal tribunal when the punishment is apportioned.

§ 96. The master or other superior who exceeds his disciplinary authority towards a seaman is liable to a fine up to three hundred thalers, or imprisonment up to one year.

§ 97. The master who intentionally neglects to fulfil his obligations to provision the vessel properly, is liable to imprisonment; and he may, in addition, be adjudged to a fine of five hundred thalers, as well as to the loss of his civil rights.

If the master has carelessly omitted to fulfil his obligations, he is, should the crew in consequence thereof not have been

able to receive proper food, liable to a fine up to two hundred thalers, or imprisonment up to one year.

§ 98. A master who, without the consent of the Seamen's Office (§ 71), leaves a seaman abroad, is liable to a fine up to one hundred thalers, or imprisonment up to three months.

§ 99. A master is liable to a fine up to fifty thalers, or to imprisonment, who—

(1) Does not comply with any of his obligations respecting the engagement (shipping, discharging) of the crew (§ 10).

(2) In order to deceive a Seamen's Office respecting the engagement (shipping, discharging) of the crew, or respecting an entry into the sea voyage book, distorts or suppresses true facts or insinuates false ones.

(3) Does not obtain and produce such evidence as is required in cases of death, or neglects his duty to attend to the property left (§§ 52, 53).

(4) Does not cause such entries in the ship's log-book to be made as are ordered by §§ 77 and 80.

(5) Does not, in case of misdemeanour or crimes, fulfil his duties in accordance with §§ 102 and 103.

(6) Refuses to the seaman, without reasonable cause, the opportunity to obtain the decision of the Seamen's Office (§§ 105, 106).

(7) Keeps a seaman without food or drink without proper cause.

(8) Does not take care that a copy of this law, as well as of the rules respecting the food and lodging of the crew, is accessible in their respective space (§ 108). § 271 of the penal code is not affected by the regulation *sub* 2.

§ 100. The designations of §§ 81-91 apply likewise if the punishable actions have been committed beyond the limits of the Confederation.

The period of limitation of the prosecution does not commence, in this case, before the day on which the vessel, to which the wrong-doer at the time belonged, first reaches a Seamen's Office.

§ 101. In the cases of §§ 81, Art. I., 84, 93, 99, the investi-

gation is made and decision given by the Seamen's Office. It has summarily to examine the accused and to ascertain the facts. Witnesses are not to be sworn. At the close of the examination, a decision supported by reasons has to be given, of which the accused is to be informed, verbally should he be present, but by a written communication should he be absent.

Should a punishment have been decreed, the duration of the imprisonment has to be fixed in case the accused is unable to pay any fine.

The accused may appeal against the decision within ten days of the publication or the receipt thereof.

The notice of appeal has to be lodged with the Seamen's Office in writing.

If the Seamen's Office is abroad, the further proceedings have to be taken before that court in whose district the port of registry is situated, and in default of such, of that German port which the vessel first reaches after the conviction.

The decision of the Seamen's Office, with respect to the collection of the fine, is provisionally to be executed.

§ 102. Should a seaman commit a misdemeanour or a crime during the time the vessel is at sea or abroad, the master must, in the presence of ship's officers or other trustworthy persons, take a record of everything which could be used as evidence of the deed, and have an influence on the punishment. More especially has the nature of the wounds to be correctly described in cases of murder or dangerous bodily injury, and likewise has to be stated how long the injured person lived, whether and what remedies were applied, and what nourishment he took.

§ 103. The master is authorised to search at any time the effects of the crew who are suspected of any punishable deed. The master is further authorised to arrest the seaman guilty of any act which is subject to heavy punishment (§ 57, *sub* 3). He is obliged to do so if there is any fear of escape.

The accused has to be surrendered, together with all the proceedings recorded, to that Seaman's Office where it can first be done. Should for special reasons a Seamen's Office abroad decline to take action, the master must cause the surrender to that Seamen's Office where it otherwise can first be done. If in urgent cases a Seamen's Office cannot be timely reached,

the master is authorised to surrender the accused to foreign authority for delivery to the competent authority of the port of registry. Notice of this has to be given to the first Seamen's Office where it can be conveniently done.

SIXTH DIVISION.

General Conditions.

§ 104. Every Seamen's Office is bound to attempt an amicable settlement of all such disputes as have arisen between the master and the seaman and are brought to its notice. The Seamen's Office before which the discharge of a seaman takes place is more especially obliged to make such an attempt at amicable adjustment.

§ 105. The seaman shall not sue the master before a foreign tribunal. If he acts contrary to this provision he shall not only answer for the loss occasioned thereby, but he shall also forfeit the wages earned up to that time.

In cases of need he may apply to the Seamen's Office for a provisional decision. The opportunity for this is not without pressing reasons to be denied by the master.

Each party has provisionally to submit to this decision of the Seamen's Office without prejudice to the right of enforcing their respective claims after the termination of the voyage before the competent authority.

In case of a forced sale of the vessel, the provisions of the first article respecting the enforcement of the demands of the seaman arising out of the hire or wages agreement do not apply.

§ 106. At home any disputes which arise after the engagement between the master and the seaman as to the commencement or continuation of the service have to be adjudicated upon by the Seamen's Office with the reservation of the right of recourse to law. The decision of the Seamen's Office is to be executed provisionally.

§ 107. The fines which are fixed or adjudged, according to the provisions of the fifth section, go to the Seamen's Fund, and, in the absence of one, to the poor-box of the port of

registry of the vessel, to which the accused at the time of committing the punishable action belonged, in case by territorial legislation such fines have not been decreed for other similar objects.

§ 108. A copy of this law, as well as of the rules respecting food and lodging of the crew (§ 45), is to be at any time accessible in the crew's space, for inspection by the seamen.

§ 109. The application of §§ 5 to 23 and of §§ 48 to 52 to smaller vessels (coasters, etc.) may, by decree of the territorial Governments, be excluded.

§ 110. This law enters into force on 1st March, 1873. On the same day the fourth part of the fifth book of the General German Mercantile Law is to be considered null and void.

§ 111. Should reference have been made in other laws to provisions which are cancelled by this law, the corresponding provisions of the latter take the place of the first.

Done at Berlin, 27th December, 1872.

(L. S.) Signed { WILHELM. / FÜRST v. BISMARCK.

II.

LAW RESPECTING THE OBLIGATION OF GERMAN MERCHANT VESSELS TO TAKE HOME DISTRESSED SEAMEN OF 27th DECEMBER, 1872.

WE, William, by the Grace of God, German Emperor, King of Prussia, etc., etc., order in the name of the German Empire, with the consent of the Confederate Council and of the Parliament, as follows :—

§ 1. Every German merchant vessel which is bound from a non-German port to a German port or to a port in the Channel of Great Britain, the Sound, or of the Cattegat, or to a non-German port in the North Sea or the Baltic, is, at the written request of the Seamen's Office, obliged to take against compensation (§ 5), to her port of destination, any German seamen, who find themselves abroad in a condition

of distress, for the purpose of being finally forwarded to Germany.

With respect to foreign seamen who, immediately after having taken service on board of a German merchant vessel, find themselves out of Germany in a condition of distress, a similar obligation devolves upon German merchant vessels which are bound to the native country of such foreign sailors. The master may, by the Seamen's Office, be compelled to fulfil such obligations.

§ 2. If several vessels offer an opportunity for passage, the seamen to be so sent home are to be distributed by the Seamen's Office on board of the several vessels according to their size and the number of their respective crews.

§ 3. The passage can be refused:—

(1) If and in so far as there is no suitable room on board for those to be taken.

(2) If the seaman who is to be taken is ill in bed, or suffering from syphilitic or such other disease as is dangerous to the health or safety of the crew, or who is to be sent home on account of a misdemeanour or crime.

(3) If and in so far as the number of those to be taken is in excess of one-fourth of the crew.

(4) If the passage is not demanded at least two days before the time the vessel is ready to sail.

The decision as to the cause of the refusal rests with the Seamen's Office.

§ 4. During the passage the seaman taken on board receives food and lodging for account of the ship. He is subject to the disciplinary authority of the master.

§ 5. In default of an agreement as to a lower rate, the compensation (§ 1) amounts for each day on board:—

(1) For a master, mate, surgeon, engineer, assistant engineer, or paymaster, to one thaler on board of sailing vessels and to one-and-a-half thaler on board of steamers.

(2) For every other seaman, to half a thaler on board sailing vessels and two-thirds of a thaler on board steamers.

§ 6. The payment of the compensation is, at the port of

destination, made by the Seamen's Office against delivery of the written request for the passage (§ 1).

§ 7. The person brought home is answerable for the expenses caused by the passage.

The directions which bind the owner or other persons to the repayment of such expenses are not affected by this law.

§ 8. Whoever avoids the fulfilment of an obligation due according to § 1 is liable to a fine up to fifty thalers, or to imprisonment. The provisions contained in § 101 of the Regulations for Seamen apply likewise for the adjudication of the punishment and for all further proceedings as herein mentioned.

§ 9. This law enters into force on 1st March, 1873.

Done at Berlin, 27th December, 1872.

(L. S.) Signed { WILHELM. / FÜRST v. BISMARCK.

ANNEX A.

LAW RESPECTING THE NATIONALITY OF MERCHANT VESSELS AND THEIR RIGHT TO CARRY THE FLAG OF THE CONFEDERATION OF 25th OCTOBER, 1867.

WE, William, etc., etc.

§ 1. All vessels of the Confederate States intended to obtain profit by means of sea voyages have in future to carry as national flag the flag of the Confederation only (Arts. 54 and 55 of the Constitution of the Confederation).

§ 2. Only such merchant vessels are entitled to carry the flag of the Confederation which are the exclusive property of such persons who are subjects of the Confederation (Art. 3 of the Constitution).

Limited liability companies and companies composed of personally liable shareholders established within the territory of the Confederation in Prussia, likewise such fellowships as are registered in accordance with the law of 27th March, 1867,

in so far as these companies and fellowships have their seat within the territory of the Confederation, and that they are composed of such personally liable shareholders as are subjects of the Confederation, have to be considered as on a level with these persons.

§ 3. Within the states of the Confederation which border on the sea, registers of all merchant vessels entitled to carry the flag of the Confederation have to be kept. The laws of the Confederation designate the authorities who have to keep the registers of shipping.

§ 4. The register of shipping is public, its inspection being permitted to everybody during the ordinary office hours.

§ 5. A vessel can only be entered on the register of shipping of that port from which the vessel is intended to be employed in navigation (home port—port of registry).

§ 6. The entry in the register of shipping shall contain—

(1) The name and description of the vessel (whether barque, brig, etc.).

(2) Its size and the carrying capacity calculated according to the size.

(3) The date and place of building, or, if it had carried the flag of a country not belonging to the North German Confederation, the circumstances under which the right to carry the flag of the Confederation was acquired, and besides, if possible, the date and place of building.

(4) The port of registry.

(5) The name and particular designation of the owner, or, if there are several owners, the names and particular designations of each co-owner, and the amount of the share each holds; if a commercial association is owner or co-owner, the firm and place where the association is established; and if the association is not a limited liability company, the name and particular designation of each member forming the commercial association; respecting companies composed of personally liable and of limited shareholders, the registration of all such members as are personally liable instead of the registration of all members will be sufficient.

(6) The legal title according to which the property in the vessel or in the several shares was acquired.

(7) The nationality of the owner or of the co-owners.

(8) Date of registration of the vessel.

Each vessel must be entered in the register of shipping under a separate regular number.

§ 7. An entry in the register of shipping cannot be made before the right to carry the flag of the Confederation, and all the items required by § 6, have been credibly established.

§ 8. The registration authority has, in virtue of the entry of the vessel in the register of shipping, to grant a document (certificate) identical therewith.

The certificate must further declare that all proofs required by § 7 have been supplied, as well as that the vessel has the right to carry the flag of the Confederation.

§ 9. The right of the vessel to carry the flag of the Confederation is attested by the certificate. No sea-pass is required in order to prove particularly this right.

§ 10. The right to carry the flag of the Confederation must not be exercised before the registration of the vessel in the register of shipping nor before the granting of the certificate.

§ 11. If subsequently to such entry changes occur in the matters of fact referred to in § 6, they must be recorded in the ship's register and stated on the certificate.

In case of the loss of the vessel, or of having forfeited the right to carry the flag of the Confederation, the vessel is to be struck out of the register of shipping and the certificate is to be returned, unless it be credibly attested that it cannot be returned.

§ 12. The circumstances which, according to § 11, necessitate an entry or a cancellation in the register of shipping have to be reported and credibly proved by the owner to the registration authority in compliance with the provisions of § 11, within six weeks after expiration of the day on which he received notice thereof, and eventually returning the certificate at the same time.

The obligation of the report and proof rests—

(1) If there is an ownership, with all the co-owners.

(2) If a limited liability company is owner or co-owner, with all the directors thereof.

(3) If another commercial association is owner or co-owner, with all the personally liable members thereof.

(4) If the change consists in a transfer of ownership, by which the right to carry the flag of the Confederation is not affected with the new owner of the vessel or share.

§ 13. If a vessel which, according to the provision of § 2, is not entitled to carry the flag of the Confederation, nevertheless sails under the flag of the Confederation, the master of such vessel is subject to a fine up to five hundred thalers or to imprisonment up to six months; the vessel may likewise be confiscated.

§ 14. If a vessel which, according to § 10, must abstain from carrying the flag of the Confederation, because the entry in the register of shipping or the granting of the certificate has not yet taken place, nevertheless sails under the flag of the Confederation, the master of the vessel is subject to a fine up to one hundred thalers, or proportionate imprisonment in case he cannot prove that the unauthorised hoisting of the flag of the Confederation was done without his fault.

§ 15. Any one who does not fulfil the obligation resting upon him in accordance with § 12 within the prescribed period of six weeks is liable to the punishment threatened by § 14 in case he cannot prove that he was faultless in not complying with the regulation. The punishment cannot be inflicted if before the expiration of the time such obligation was fulfilled by another person who was equally obliged to perform the same duty. The punishment is doubled towards such person as likewise neglects to fulfil the obligation within six weeks after the day on which the judgment becomes valid in law.

§ 16. If a foreign vessel outside the territory of the Confederation becomes by transfer the property of a person who is a subject of the Confederation, and acquires thereby the right to carry its flag, the entry in the register of shipping and the certificate may be replaced by a certificate issued by the consul of the Confederation in whose district the vessel at the time of the transfer was, and by which this official attests the acquisi-

tion of the right to carry the flag of the Confederation; but such consular certificate is only valid for the duration of one year from its date, and beyond this year only for such time as the voyage may be prolonged by *force majeure*. As long as consulates of the separate states of the Confederation exist, the certificate in question may be granted by the consul of such state of the Confederation to which the buyer of the vessel belongs, and no such consul nor a consul of the Confederation being appointed, by the consul of another state of the Confederation (Art. 56 of the Constitution of the Confederation).

§ 17.* It is reserved for the laws of the Confederation to determine whether and which smaller vessels (coasters, etc.) are entitled to carry the flag of the Confederation without previous entry in the register of shipping and the grant of the certificate.

§ 18. Vessels which, in accordance with § 2, are entitled to carry the flag of the Confederation, and which in consequence of the provisions of Art. 432 of the General German Mercantile Law are already entered on the ship's register of a Confederate State, and are therefore already provided with certificates as to the right of carrying the flag of the Confederation, do not require to be entered again on the register of shipping or to be provided with new certificates in order to exercise the right to carry the flag of the Confederation.

§ 19. The provisions of the laws of the Confederation respecting the keeping of the existing registers of shipping apply likewise to the keeping of registers of shipping according to this law in so far as they are in accordance with the provisions of the same, and without prejudice to later alterations by the laws of the Confederation.

§ 20. This law enters into force on 1st April, 1868.

Respecting such vessels as are at present entitled to carry the flag of Mecklenburg-Schwerin, the provisions of § 2 as to the requirements of the nationality do not enter into force before 1st April, 1869.

Done at Castle Babelsberg, 25th October, 1867.

(L. S.) (Signed) { WILHELM.
{ COUNT v. BISMARCK-SCHÖNHAUSEN.

* Repealed by the law of 28th June, 1873.

REGISTRATION AND DESIGNATION OF MERCHANT VESSELS. IMPERIAL LAW OF 28th JUNE, 1873.

We, William, etc., etc.

§ 1. In place of § 17 of the law respecting the nationality of merchant vessels and their right to carry the flag of the Confederation, dated 25th October, 1867, the following regulation is substituted:—

"Vessels of not more than fifty cubic metres gross tonnage are entitled to carry the national flag without entry into the register of shipping and the grant of the certificate."

§ 2. The change of name of a vessel once entered in the register of shipping may only, from specially urgent reasons, be allowed. The consent of the Imperial Chancellor's Office is requisite for it.

§ 3. Every vessel entered in the register of shipping must have:—

(1) Its name on each side of the bow, and

(2) Its name, and the name of the port of registry, on the permanent parts of the stern, in good, visible, and securely fastened letters.

§ 4. In case of contravention against the provisions of § 3, the master of the vessel is subject to a fine up to one hundred and fifty marks, or imprisonment.

§ 5. This law enters into force on 1st January, 1874.

Done at Castle Babelsberg, 28th June, 1873.

(L.S.) (Signed) { Wilhelm. / Fürst v. Bismarck.

LAW RESPECTING COAST TRADING VOYAGES, DATED 22nd MAY, 1881.

§ 1. The right to load goods in a German seaport, and to carry them to another German seaport in order to be discharged there (coast trading voyages), belongs exclusively to German vessels.

§ 2. This right may be granted to foreign vessels by State

treaty, or with consent of the Council of the Confederation by imperial decree.*

§ 3. The master of a foreign vessel who, unauthorised, pursues coast trading voyages, is subject to a fine up to three thousand marks.

And the vessel, as well as the goods so illegally forwarded, may, besides the fine, be adjudged to be confiscated, irrespective of whether they belong to the party condemned or not. § 42 of the penal code is accordingly to be applied.

§ 4. Existing treaty stipulations as to coast trading voyages are not affected by this law.†

§ 5. This law enters into force on 1st January, 1882.

* By decree of 29th December, 1881: "The right to load goods in a German seaport, and to carry them to another German seaport in order to be discharged there (coast trading voyages), has been granted to vessels of Belgium, the Brazils, Denmark, Great Britain, Italy and Sweden-Norway".

† The present treaty regulations to which § 4 of the above law refers are given in detail by the proclamation of the Imperial Chancellor, dated 29th December, 1881. They concern Austro-Hungary, Roumania, Siam and Tonga.

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